ÖZGÜNLAW
PROTECTING YOUR INTERESTS

LAW BULLETIN

Issue No: 10 January, 2024

We are glad to share January issue of our Law Bulletin which includes recent legal developments and news globally and in Turkey.

All the content herein is for information purposes only and please contact us for further information.

Editors:
Burcu Çelik Gökçen
Att. Erse Kahraman

Recent News

EVALUATIONS ON CAPITALIZATION OF IMMOVABLE PROPERTY AS CAPITAL IN KIND FOR JOINT STOCK COMPANIES

1. In General

Undoubtedly, the "capital", which provides the main source of financing of the company, has a special importance in joint stock companies. The fact that the shareholders of joint stock companies are not liable for the debts of the company, in other words, joint stock companies are liable limited to their capital, makes the concept of "capital", which is the only source to which creditors can resort, extremely important.

Within the scope of the capital that the shareholders undertake to contribute, the concept of "capital in kind" will come to the fore in the event that a value other than cash is contributed to the company as capital, in addition to the fact that the capital can be brought in cash. One of the elements that can be brought as capital to joint stock companies is immovable property. The procedures to be followed in bringing immovable property as capital in kind to a joint stock company and the evaluations regarding the existence of burdens such as limited real rights, attachment and injunction on the elements of capital in kind will constitute the subject of this study.

2.Procedures to be Followed in Bringing Immovables as Capital to Joint Stock Companies

The introduction of real estate as capital in kind to joint stock companies takes place in two stages, namely "commitment transaction" and "disposition transaction". Pursuant to Article 128/1 of the TCC; "Each shareholder is indebted to the company for the capital that s/he has undertaken to contribute through a duly drawn up and signed company agreement."

At this point, the commitment stage consists of the commitment of the shareholders of the real value subject to the commitment that may be brought to the joint stock company as capital in kind, its registration in the articles of association and the valuation procedure of the real value to be taken as the basis for the capital commitment. Following the commitment to bring the rights in kind as capital to the joint stock company, the ownership will be acquired by the company upon the completion of the disposition process stage, which requires the company to go through the registration process with the land registry in order to be able to dispose of them, and thus, it will become possible to carry out disposition transactions.

Regarding this process consisting of two stages, we will specifically mention the sub-heading of the valuation to be carried out by the experts regarding determination and recording of the monetary equivalents of capital values other than cash, and we will be briefly mentioning the remaining issues. Namely;

Regarding the form of the commitment transaction; although the commitment transaction for the transfer of immovable property is subject to the official form requirement according to the general provisions, with the special regulation in the TCC, the form requirement regarding the immovable property as capital for joint stock companies is extremely mitigated. Article 128/3 of the Turkish Commercial Code No. 6102 sets out that "The provisions of the company agreement, which include the obligation to include immovable property or a real right existing or to be established on immovable property as capital, are valid without the requirement of formal form." As such, inclusion of the commitment to subscribe immovables as capital in kind in the articles of association of the company shall be sufficient to validate the commitment of capital in kind without the requirement of formal form, without the need for a separate and additional agreement other than the articles of association.

Within this framework, the exception to the obligation to execute the agreement regarding the transfer of the immovable property before the land registry officer or through a notary public in the form of a promise to sell, is the issue that the immovable property may be contributed as capital in kind to capital companies. Pursuant to the Art. 128/2 of the TCC; "Immovables, which are included in the company agreement or articles of association with their values determined by an expert, shall be accepted as capital in kind, provided that they are annotated to the title deed, intellectual property rights and other assets are registered in their special registers, if any, in accordance with this provision, and movables are entrusted to a trustworthy person. Registration in the special registry removes good faith." Pursuant to the Article 128/2 of the TCC, an annotation must be made in the land registry regarding the commitment to bring the immovable as capital to the joint stock company. At this point, it is worth noting that an asset value that does not yet exist cannot be subscribed as capital in kind to a joint stock company. Since the absence of an annotation will constitute an obstacle to the registration of the partnership, the value committed as capital in kind must exist before registration.

Further, the value of the assets undertaken to be subscribed as capital must be determined by an expert, this value must be specified under the articles of association, signed and notarized, and the annotation must be realized by applying to the registry office.

Pursuant to the Article 343 of the TCC; "The capital in kind subscribed and the enterprises and real estate to be taken over during the establishment shall be appraised by the experts appointed by the commercial court of first instance in the place where the company headquarters will be located. Under the valuation report, the valuation method applied is the fairest and most appropriate choice for everyone in terms of the characteristics of the concrete case; the authenticity, validity and compliance with the Article 342 of the receivables contributed as capital, their collectability and their full value; the amount of shares to be allocated for each asset contributed in kind and their Turkish Lira equivalent shall be explained on satisfactory grounds and in accordance with the requirements of the principle of accountability... "

In the continuation of the wording of the article, unlike the ECL, instead of the system of appointment of the expert by the general assembly, the system of valuation by the experts appointed by the commercial court of first instance in the place where the company headquarters will be located has been changed. As a matter of fact, the aforementioned regulation is appropriate and proportionate as it makes the valuation to be made by independent experts much more important within the framework of the collective solution to be brought within the scope of the applicable regulations and practice, as will be more clearly understood with our explanations below, in case there is a burden on the relevant immovable.

The phrase "...the valuation method applied is the most fair and appropriate choice for everyone in terms of the characteristics of the concrete case" under the Article 343 of the TCC allows the expert to use the valuation method that he finds appropriate for each item of capital in kind in the concrete case. [1] In addition, the phrase "on satisfactory grounds and in accordance with the requirements of the principle of accountability" is an appropriate regulation introduced in order to prevent arbitrariness.

However, what has been criticized in the doctrine here is that the selection of "the commercial court of first instance in the place where the company's headquarters will be located" will make it difficult to make the valuation of the absolute jurisdiction rule in the event that the immovable property to be capitalized is located in a place other than the place where the company's headquarters will be located. [2]

In addition, another criticism here is that the order of the establishment procedures was omitted while determining the authorization rule. This is because the valuation report should be prepared first, and then the articles of association should be prepared. At the time of the application to the court in order to execute the valuation procedure, the articles of association will not have been prepared yet, and therefore, the company headquarters, which should be specified in the articles of association, will be uncertain. In this case, the legislator has regulated an unenforceable authorization rule. This seemingly minor regulation regarding the authorization rule, which we have difficulty in making sense of, supports our views below that the legislator has adopted a simplistic attitude towards the subject matter of our article.

At this point, although Article 384 of the CCP, which regulates jurisdiction in non-contentious judicial proceedings, may be applicable in the valuation procedure, it does not change the fact that the subject matter of our article is in need of detailed study and regulation, that the applicable regulations are insufficient and that there are implementation problems. [3]

Pursuant to the Article 339/1 of the TCC; "The articles of association must be in writing and the signatures of all founders must be notarized or the articles of association must be signed in the presence of the trade registry director or his deputy." Likewise, in the continuation of the provision, the matters to be set out under the articles of association are specified, and Article the 339/2-e of the TCC reads as follows: "Rights and real property, other than money, that have been contributed as capital; their values; the amount of shares to be given in return for them; in the event that a business or real property is taken over, the value thereof; and the value of the goods and rights purchased by the founders for the establishment of the company on the account of the company, and the amount of the wages, allowances or rewards that should be given to those who have rendered services in the establishment of the company."

As can be understood from the wording of the law, the value of the assets to be put as capital in kind must be written under the articles of association of the company. Therefore, the articles of association cannot be written without this valuation to be performed by experts. In this case, it is very clear that the value of the assets to be taken as a basis for the capital commitment must be available before the articles of association are drafted.

Further, with respect to the disposition transaction, pursuant to the Article 128/5 of the TCC Nr. 6102; "In the event that immovable property or other real right is subscribed as capital, registration with the land registry is required for the company to dispose thereof." The TCC explicitly stipulates that the acquisition of ownership by the company is only possible through registration. Paragraph 6 of the aforementioned article sets out that the request for the registration of the property right in the land registry shall be made ex officio and immediately by the trade registry director, and in addition, the company's unilateral right of request is reserved.

3. Current Situation of Immovable Properties with Limited Real Rights, Liens, Encumbrances, Measures, etc. under the Applicable Regulations

Article 1 of the Turkish Commercial Code Nr. 6102 defines the Turkish Commercial Code as an integral part of the Turkish Civil Code Nr. 4721. In this case, the concept of "property right", as set out under the Article 683 of the Turkish Civil Code Nr. 4721, constitutes the basis of the assets to be contributed to a company as capital in kind.

Article 342 of the Turkish Commercial Code Nr. 6102 titled "Elements of assets that may be contributed as capital in kind" reads as follows: "(1) Elements of assets, including intellectual property rights and virtual media, on which there is no limited real right, attachment and injunction, which can be valued and transferred in cash, may be contributed as capital in kind.

Acts of service, personal labor, commercial reputation and outstanding receivables cannot be capital. (2) The provision of Article 128 is reserved hereby." As it is understood from the wording of the article, it is required that the assets that may be capital must be transferable and measurable in money. When the provision of the Law is analyzed, only assets that do not have a limited real right, injunction or attachment on them can be brought as capital in kind to capital companies.

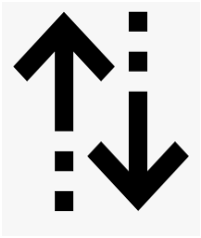
The accuracy of the regulation set forth by the legislator that immovables with certain impositions on them cannot be put as capital in kind in capital companies is highly controversial and the relevant regulation creates problems in practice. As will be explained in detail below, we are of the opinion that the aforementioned regulation needs to be reviewed and amended both in terms of the current conjuncture of our country, due to its disruptive effect on uniformity in practice, and in terms of security of legal interpretation.

4. The Importance of Expert Valuation Procedure for Acceptability of Immovables with Encumbrances, Liens, Pledges, Easements, Encumbrances, etc. as a Basis for Capital Commitment

Regarding the value to be taken as the basis for the capital commitment and the valuation stage regarding determination of this value, determination and recording of the monetary equivalents of capital values other than cash is an obligation clearly regulated by the legislator. In the case of a capital in kind commitment, the necessity of the valuation of the relevant asset value by experts is beyond explanation in the face of the clear provision of the law. However, the main point to be emphasized here is that the care, importance and trust to be given to the expert appraisal process is very important for the basis of our arguments regarding the amendments to be made under the current applicable regulations.

In this context, the view, which we also agree with, that the existence of certain impositions such as liens, pledges, easements, encumbrances, etc. on immovables does not prevent the immovables from being put as capital in kind, since the value decreases caused by these impositions can be determined as a result of the valuation to be made by the experts, and the remaining net value of the immovable can be taken as the basis for the capital commitment after deducting the value decreases from the base value, is more in line with the interests to be protected, equity and today's economic conditions.

Although there are concerns regarding the objectivity of the valuation in practice and we find these concerns reasonable, there is no doubt that if the procedures are operated correctly and safely, it will not become an insurmountable problem. At this point, we are of the opinion that if the persons, institutions, and commission



staff who will work on the subject are selected from expert teams, the procedures will function in a healthy manner, eliminating the concern that the company's capital will remain uncovered.

In the event that there are certain impositions on the elements of capital in kind, the fact that the valuation procedure to be carried out by the experts may be carried out and a reduction may be made by making a valuation according to the weight of the imposition in question, may observe the principle of protection of creditors. As a matter of fact, Ünal Tekinalp, the chairman of the Scientific Commission of the Turkish Commercial Code Nr. 6102, has personally addressed this issue by stating that "... by introducing an exception to the Article 342 of the TCC, acceptance of capitalization with the remaining value by deducting the debt secured by the collateral as a result of the expert examination would be in accordance with the balance of interests...". [4]

Likewise, the decision, bearing the Basis number 2017/364 and the Decision number 2018/6494 and dated 18.10.2018, of the 11th Civil Chamber of the Court of Cassation regarding the mortgaged immovables that are desired to be put as capital in kind in the capital increase of the limited liability company, reads as follows: *"...According to the reversal decision observed by the court and the scope of the entire file; there was a mortgage on all three immovables subject to the lawsuit before the aforementioned decision of the board of shareholders, this situation is contrary to the Article 581 of the Law Nr. 6102. However, the total value of the immovables is below the mortgage debt, and the decision of the board of shareholders to put the immovables into the company as capital in kind...is contrary to the law", and the local court's decision accepting the case was upheld. The statement "...that the total value of the immovables is below the mortgage debt..."* in the reasoning of the decision supports our opinion that -the value decreases caused by these impositions and/or impositions on the immovable can be determined as a result of the valuation to be made by the experts and that the remaining net value of the immovable can be taken as the basis for the capital commitment after deducting the value decreases from the base value. [5]

Likewise, the decision, dated 05.12.2019, of the Commercial Court of First Instance reads as follows: *"The lawsuit, in terms of its legal nature, consists of the request for determination of the value of the immovables to be put as capital to the joint stock company under the Articles 342 and 343 of the law numbered 6102. In the examination of the title deed record subpoenaed from the Land Registry Office, it was seen that 5630/6150 shares of the real estate in the nature of a field, registered in Istanbul, on the parcel …, were registered in the name of Ö. Ü., 520/6150 shares were registered in the name of K. A., and a mortgage of TRY 3.750.000 was imposed on the immovable in favor of ... Bankası A.O..*

It is understood that there is nothing contrary to the law in the determinations under the expert report received by our court, and that there are mortgage records on the immovable property registered in Istanbul, on the parcel …, consisting of 10 floors and with an area of 10.400 m2. As a rule, there is no legal obstacle for a mortgaged immovable to be put into a company as capital in kind. However, the real value of these immovables must be more than the value of the mortgage that restricts it. The mortgaged immovable becomes capital with this residual value and up to its residual value. Otherwise, the capital commitment and placement would be a fictitious transaction.

Accordingly, it has been determined by the experts that the real value of the immovable is more than the mortgage value that restricts it. The request consists of a request for determination of the value of the immovable property subject to the request, stating that the immovable property belonging to the company's partners will be put as capital in kind to the company in accordance with the Articles 329 et seq. of the TCC, and based on the title deed records subpoenaed and the expert report received; the report of the expert committee dated 06.11.2019 regarding the fair value of the immovable property, including the land, subject to the request ..., is of the nature specified under the Articles 329 et seq. of the TCC.

It is understood that the value determination was made according to the qualitative evaluation criteria specified under the Article 343 of the TCC, and the approval of the said report was deemed appropriate, and the judgment was established as follows", and the judgment was established as follows: "With the acceptance of the request, the report dated 07.11.2019 prepared by the experts...to be approved in accordance with the Article 343 of the TCC."

In the Expert Panel Report dated 07.11.2019; it is stated as follows: *"As a result of the examination and evaluation made, the fair value of the immovable subject to the lawsuit...including the land may be TRY 62.400.000- (sixty-two million four hundred thousand TL), and from the determined fair value of TRY 62.400.000,00-, the mortgage amount of TRY 3.750.000,00 is deducted from the determined fair value of TRY 62.400.000,00, the amount that should be registered as capital in kind is TRY 58.650.000,00, and it is concluded that it can be put as capital in kind... according to the share status."*

Consequently, in the wording and spirit of the law, in particular and for example, in cases where the real value of the immovable property to be brought as capital is more than the value of the mortgage or any other imposition restricting it, it should be allowed to be accepted as capital in kind. [6] Likewise and for example; if the immovable is put up for sale through execution, the possibility of the immovable being sold at a price below its actual value should be taken into consideration by the experts, and calculations should be made accordingly. This valuation procedure, which includes set-off within its structure, can be applied to all kinds of concrete cases and will eliminate the problems in practice and ensure legal security by protecting the mutual interests of the parties.

5. A Brief Evaluation Regarding the Explicit Provision of the Turkish Commercial Code Nr. 6102 on Prohibition of Bringing Immovables with Limited Real Rights, Liens, Encumbrances, Measures, etc. as Capital in Kind to Joint Stock Companies

First and foremost, pursuant to the Article 1 of the Turkish Civil Code Nr. 4721; "The law shall apply to all matters to which it deals in letter and spirit." Therefore, when we look at the opposite meaning of the Art. 342 of the TCC Nr. 6102, a serious limitation emerges, and we are of the opinion that this verbal meaning, which is incompatible with the spirit of the law and which is put forward only by literal interpretation, cannot be accepted.

Article 6102 of TCC Nr. 6102 stipulates that assets that do not have any limited real rights, injunctions and attachments may be brought to capital companies as capital in kind. The concerns that constitute the reason for this provision and/or the opinion that has found its supporters in the doctrine remain hypothetical and the systematic and discipline on which the opinion is based does not rest on a logical ground. Therefore, this strict restriction, which is based only on the wording of the provision, causes problems in practice and the provision needs to be evaluated in its current form.

The fact that the capital, which provides the main source of financing of the company, is the only guarantee of the company's creditors and therefore the principle of protection of creditors should be observed is undoubtedly an important issue that we agree with. However, as mentioned above, the literal interpretation based on the wording of the provision is extremely strict and contains loopholes. This is because there is no regulation on the type, qualities, quantities, etc. of the impositions and/or impositions on the immovable property in the continuation of the wording of the law, and the relevant issues should be regulated. Not every imposition listed under the Art. 342 of the TCC will have the same effect in terms of changing the value of the capital in kind. In this case, each concrete case should be evaluated separately and within its own structure. It is obvious that it is not possible for each of the impositions listed as "limited real rights, attachment and injunction" to have the same result in terms of the adequacy of the capital in kind, both in comparison to each other and in terms of the sub-types of these impositions. [7]

In addition, the former Law Nr. 6762 (eTCC) did not contain a provision containing the aforementioned restriction. Although, over time, the aforementioned restrictions have been expanded by disregarding some other principles and principles within the scope of the principle of protection of creditors and the concern that the company's capital may remain uncovered, the relevant regulation, as it stands, is not capable of providing definitive solutions to existing and potential problems. Likewise, there is no equivalent to the regulation regarding the said restrictions in German Law.

As a result, the aforementioned provision, which contains restrictions intended to be preventive and remedial, will continue to contain potential problems if it is not developed and elaborated.

6. Do the Valued Immovables Committed as Capital and Imposed with Encumbrances Constitute a Registration Obstacle?

As we have explained above, the value of the assets undertaken to be subscribed as capital must be determined by an expert, this value must be written under the articles of association, signed and notarized, and the annotation must be realized by applying to the registry office.

At this point, the legislator has stipulated that the matters described in the Article 339/2-e of the TCC must be included under the articles of association. In this regard, we will make explanations and evaluations within the scope of the requirement to include the value of the assets to be contributed as capital in kind under the articles of association of the company, and then we will address the application to the registry office and the requirement for the annotation. Following the commitment to bring the rights in kind as capital to the joint stock company, the relevant appraised assets must be registered with the land registry in order for the company to be able to dispose of them.

At this point, the text of the TCC is silent as to what should be done in practice in the event that the matters sought by the legislator under the Art. 339/2-e are not included under the articles of association of the company or are not duly signed. In this case, if we go to the Article 32 of the TCC, we will come across the provision stating that "In the registration of legal entities, it shall be examined whether the articles of association of the company are not contrary to the mandatory provisions and whether the said agreement contains the provisions that the law stipulates as mandatory."

Based on this provision, it can be said that in case of deficiencies or irregularities under the articles of association, the trade registry director will refrain from registration of the partnership. [8]

Likewise, the justification of the Article 339 of the TCC reads as follows: "If the mandatory content is not complied with, the registry director shall reject the articles of association for completion or correction." As can be seen, the trade registry director has the authority to reject the registration request.

Therefore, without in any way implying an acceptance by us, based solely on the wording of the law, it may be concluded that the director of the trade registry may refrain from registration of immovables with impositions on them. When we turn to the actual practice of the matter and look at the practice, the immovables that are intended to be committed as a basis for capital in kind are valued by the experts appointed by the commercial court of first instance upon application of the relevant parties. And this value is written under the articles of association.

However, problems arise during application to the registry office for registration in order for the company to be able to dispose of them. This is because, as an inevitable consequence of the literal interpretations under the law, the registry director may reject such registration requests based only on formal examinations. In addition, in current practice, the registry directorate may reject the registration request even for a land over which a high-voltage line passes, despite the fact that it does not prejudice the principle of supply of capital in terms of value. This situation shows that the current applicable regulations are not even based on the hypothetical concerns in question, but on a simplistic perspective.

In this respect, there are solutions in practice to preserve the value of a piece of land and there is no danger that this land will leave the capital unpaid. Nevertheless, since the legislator has not put forward a fair legal regulation in such a way that each concrete case can be evaluated on its own merits, unfair and unfounded enforcement decisions are signed.

Despite the fact that the relevant procedures are functioning properly until the registration stage, the obstacle of the trade registry director that arises at the registration stage clearly demonstrates our rightness in the matters we have endeavored to explain throughout our study. In the face of the clear provision stating that "The law shall be applied to all matters to which it refers in letter and spirit", we cannot understand the fact that the relevant regulation is left to the will of the trade registry director, rather than the legislator. In addition, it is not correct to attribute an effect regarding the commitment phase to a rule regarding the savings phase.

Consequently and explicitly, the current applicable regulations on the possibility of placing immovable properties as capital in kind in joint stock companies are still in existence as a hasty arrangement by creating inevitable deficiencies in line with purely literal interpretations and leaving the continuation processes to a formal examination to be carried out by the trade registry directorate. As such, it is essential for the legislator to put forward a will that includes detailed examination and regulation.

Although we have introduced the subject with information and evaluations on the fact that the regulations on the registration process cause problems in practice, we feel the need to emphasize our opinion that in depth regulations to be made by the legislator are essential, rather than formal examinations and regulations, because these purely literal and formal regulations cause many grievances in practice and cast a shadow on the security of law. As we have repeatedly stated, the legislator has followed an extremely simplistic attitude and left the matter entirely to the methods of interpretation. As a matter of fact, if we look at the existing and potential problems in practice, the law is put into practice by interpreting it in an extremely narrow manner, and this situation fails to protect the balance of interests between the basic principles of law.

In the face of the text of the law, which we find to be incomplete, groundless and contradictory, the solution method of determining the net value of the real to be added as capital through the expert valuation method is of a nature to eliminate many problems. We are of the opinion that the fact that the law contains gaps and erroneous regulations regarding the issue that constitutes the subject of our article is not open to interpretation and is extremely clear.

Reiterating our opinion that it is essential for the legislator to make a detailed regulation; if we support all the contradictions that can be detected even in the way we have tried to briefly explain in this article with a few more examples;

THE CURRENT APPLICABLE REGULATIONS ON THE POSSIBILITY OF PLACING IMMOVABLE PROPERTIES AS CAPITAL IN KIND IN JOINT STOCK COMPANIES ARE STILL IN EXISTENCE AS A HASTY ARRANGEMENT BY CREATING INEVITABLE DEFICIENCIES IN LINE WITH PURELY LITERAL INTERPRETATIONS AND LEAVING THE CONTINUATION PROCESSES TO A FORMAL EXAMINATION TO BE CARRIED OUT BY THE TRADE REGISTRY DIRECTORATE.

Article 339/1 of the TCC sets out that "A joint stock company is a company whose capital is definite and divided into shares, and which is liable for its debts only with its assets."

In this case, a possible interpretation that immovable properties with impositions on them will eliminate the "certainty", which is a characteristic of the main capital of a joint stock company, will be unacceptable and will be in need of explanation. As follows:

Determination of the share capital means that the amount of the share capital is a value that is determined and expressed in money and that this amount is specified under the articles of association of the company.

The certainty of the share capital, the fact that the amount of the share capital is predetermined and expressed in money, and that this amount is specified under the articles of association of the company and in places such as the trade registry, which are accessible to the relevant parties, eliminates the concern that the share capital will remain uncovered.

Likewise, the fact that this amount is determined, informed and transferred in a manner accessible to the relevant parties, such as the trade registry, protects the principle of protection of creditors and the principle of supply of capital by protecting the determination of the capital.

Therefore, the value of the immovable property with impositions on it, which is intended to be brought to the joint stock company as the main capital, contradicts with the definite nature of the capital, but it is a situation that may occur as a result of the inability to assign a monetary value to it. Otherwise, an immovable property with impositions on it has nothing to do with the definite nature of the capital.

In this case, the applicable regulations regarding the immovable property with impositions on it, which was put forward by the legislator within the framework of the existing concerns, are also erroneous for this reason, because the aforementioned concerns have no basis and justification.

As we have repeatedly explained above, experts may, of course, make valuations regarding these immovable properties. In current practice, reports are prepared by experts on the immovables with impositions thereon, and this report prepared by the experts appointed by the competent court should be deemed necessary and sufficient at the registration stage.

Therefore, we are of the opinion that the approval to be given for registration of a value, which can be monetized by experts, in the registry in a manner accessible to the relevant parties is extremely reasonable.

As such, we are of the opinion that the immovable properties that are committed to be put as capital and that have been appraised with impositions on them will not constitute an obstacle to registration.

As a result, while it is quite clear that existence of certain impositions on immovables does not prevent them from being put as capital in kind, since the value decreases caused by these impositions can be determined as a result of the valuation to be made by the experts and the remaining net value of the immovable can be taken as the basis for the capital commitment after deducting the determined value decreases from the base value, in other words, there is no hesitation about the determinability of the capital, we cannot understand the basis on which the legislator has imposed the restrictions subject to our article.

In the final analysis, it is unacceptable that these interpretations and/or formal regulations introduced in line with the applicable regulations, the basis of which is erroneous, create an obstacle to registration, and it is essential for the legislator to put forward a will that includes a detailed regulation.

7. Conclusion

Considering our current explanations, it would not be wrong to say that the legislator has taken a simplistic approach to this issue, which is extremely disruptive to unity in practice.

This is because the contradictions and gaps under the applicable regulations can be resolved through the expert valuation procedure and detailed studies on the relevant regulations.

As a result, the view that the existence of certain impositions such as liens, pledges, easements, encumbrances, etc. on immovable properties does not prevent them from being put as capital in kind, since the value decreases caused by these impositions can be determined as a result of the valuation to be made by the experts, and that the remaining net value of the immovable can be taken as the basis for the capital commitment after deducting the value decreases from the base value, and that the valuated immovables with impositions on them will not constitute an obstacle to registration is more in line with the interests to be protected, equity and today's economic conditions both in terms of the current conjuncture of our country and in terms of legal interpretation security.

For further information:
Att. Öykü Yaman
info@ozgunlaw.com

References:

1. Paslı, AO Hükümlerinin Tanıtılması II, p. 182.

2. Kendigelen, İlk Tespitler, p. 231.

3. Çonkar, H.: Anonim Ortaklıkta Ayni Sermaye, Istanbul 2016.

4. Tekinalp (Poroy/Çamoğlu), Ortaklıklar Hukuku II, Istanbul 2017, p. 241, p. 1382c.

5. Bahtiyar, Anonim ve Limited Şirketlere Konulacak Ayni Sermaye Unsurları Üzerinde Sınırlı Ayni Hak Bulunmaması Şartına İlişkin Bazı Değerlendirmeler

6. Oğuzman, M. K./ Barlas, N.: Medeni Hukuk, 25th Ed., Istanbul 2019.

7. Paslı, AO Hükümlerinin Tanıtılması III, p. 198 et seq.; Akdağ Güney, ibid. p. 100.

8. Tekinalp, Sermaye Ortaklıkları,

THE US FEDERAL TRADE COMMISSION REACHES FIRST LOCATION DATA TRACKING SETTLEMENT

Data broker X-Mode Social and its successor Outlogic LLC reached a settlement with the Federal Trade Commission prohibiting the company from sharing or selling sensitive location information. This settlement resolves claims that Outlogic, formerly known as X-Mode Social, violated consumers' privacy for several years by selling their data to advertisers, researchers, retailers and government contractors without permission.

Outlogic, which has marketed itself as the second-largest U.S. location data company, also agreed to delete all sensitive location data it collected illegally, and stop disclosing such data unless consumers agree, the FTC said.

"Openly selling a person's location data to the highest bidder can expose people to harassment, stigma, discrimination or even physical violence," FTC Chair Lina Khan said in a statement. Americans deserve protection from "unchecked corporate surveillance," she added.

The FTC said Norfolk, Virginia-based Outlogic typically gathers data through its own apps, software on third-party apps, and purchases from aggregators. It also said Outlogic would provide data purchasers with "audience segments" for such disparate groups as "firehouses," "military bases" and "size inclusive clothing stores." "The Commission rejects the premise so widespread in the data broker industry that vaguely worded disclosures can give a company free license to use or sell people's sensitive location data," Khan added.

In a statement, Outlogic said "we disagree with the implications" of the FTC announcement and said there was no finding it misused location data. Outlogic also said that since its 2013 inception, X-Mode has prohibited customers from "associating its data with sensitive locations such as healthcare facilities."

The FTC's proposed order requires Outlogic to delete or destroy all previously collected location data and any products produced from it, then implement procedures to prevent its clients from connecting users with sensitive places and provide consumers a clear way of withdrawing consent from the collection and sale of their location data. The agreement will be open to public comment for 30 days after which the FTC will decide to finalize it.

Sources: ***https://www.reuters.com/technology/cybersecurity/us-ftc-reaches-first-location-data-tracking-settlement-2024-01-09/***
https://news.bloomberglaw.com/privacy-and-data-security/ftc-reaches-first-settlement-banning-location-data-tracking

TRADEMARK INVALIDITY CONDITIONS AND THE "PRINCIPLE OF ACTUAL RIGHT OWNERSHIP"

INTRODUCTION

As in our personal lives, being different and unique in commercial life, standing out from the competition and being remembered are among the main purposes of existence. Just as we try to express our style and character through our haircuts and clothing, commercial enterprises strive to express who they are and what they do in the most striking and memorable way through their trademarks. Trademarks, which are so important, are protected under national and international law and various statutory regulations have been introduced.

Trademark right is under the concept of industrial property and is one of the absolute rights that can be asserted against anyone. Especially with the innovations brought by the Industrial Revolution, the typical definition of property has had to expand, and industrial inventions have been taken under protection under new statutory regulations.

In this article, the place of the trademark right under our regulations, the conditions of trademark invalidity, loss of rights through silence, the defense of non-use of the trademark and the principle of actual right ownership, which gives rise to a special trademark invalidity, will be examined.

1. TRADEMARK RIGHT AND INVALIDITY OF TRADEMARK UNDER OUR REGULATIONS

1.1. IN GENERAL

In our law, trademark right is mainly regulated under the Law Nr. 6769. Article 4 of the Law defines the trademark as follows: "A trademark may consist of any sign, including personal names, words, shapes, colors, letters, numbers, sounds and the form of the goods or their packaging, provided that it enables the goods or services of an undertaking to be distinguished from the goods or services of other undertakings and that it can be displayed in the registry in such a way that the subject matter of the protection provided to the trademark owner can be clearly and precisely understood."

As it is understood from the wording of the provision, the trademark covers all kinds of signs that provide distinctiveness, including words, shapes, colors, letters, numbers, sounds and the form of the goods or their packaging, including personal names. The definition specifically requires that they must be capable of being displayed in the register in such a way that the subject matter of the protection can be clearly and precisely understood.

Therefore, three-dimensional shapes must be capable of being expressed in the register in two dimensions, and sounds must be capable of being expressed by notes and certain objective indicators. Whether scents are included in the trademark right is a matter of debate both in our law and in the European Union law.

Since it is not listed in the definition article, it is not possible to register scents in our country, even if they are identified with the trademark and have gained recognition. However, in the US, for many years, scents have been registered by the US Patent and Trademark Office (USPTO).

One of the striking decisions in this regard is the "Play-Doh" Play Dough decision. Hasbro Inc., the creator of Play-Doh play dough, succeeded in registering the smell of vanilla sweet dough, which we are all familiar with from our childhood, under the US Trademark Law. However, since scents are difficult to express in a clear, unambiguous, publicly known and understandable manner, they have not yet been included within the scope of trademark rights in our law. [1]

Following the definition article, "Absolute Grounds for Refusal in Trademark Registration" and "Relative Grounds for Refusal in Trademark Registration" are regulated in our Law. In addition to these regulations, as we will examine in detail, Article 25 sets out "Cases of Invalidity and Request for Invalidation". If the trademark is registered despite the existence of one of the Absolute and Relative Reasons for Refusal, the protection provided by the law is eliminated by filing an invalidation lawsuit.

1.2. TRADEMARK INVALIDITY CONDITIONS

Nullity is defined as "removed from force, no longer in force, rendered invalid". In trademark law, invalidity means "cancellation of a registered trademark through a lawsuit due to lack of the necessary conditions and thus termination of the trademark right previously obtained." [2]

Various grounds for invalidity are regulated in our Law and these are basically absolute and relative grounds for refusal. Absolute grounds for refusal are ex officio observed by the Turkish Patent Institute at the trademark registration stage due to their public importance. Relative grounds for refusal are regulated in order to protect the rights of real and legal persons whose interests are damaged. Individual benefit, not public interest, is in question and is not taken into consideration ex officio by the Institute. [3]

1.2.1 Reasons for Absolute Refusal

Under Article 5 of the Law Nr. 6769, the following signs may not be registered as trademarks:

- Signs not covered by Article 4,
- Signs that do not have any distinctive characteristics,
- Signs which are identical or indistinguishably similar to a trademark which has already been registered or for which an application for registration has already been made in respect of the same or similar goods or services,
- Signs which exclusively or as an essential element include signs and designations in the field of commerce indicating the genus, variety, quality, quality, quantity, purpose, value, geographical origin or indicating the time when the goods are produced, the services are provided or other characteristic features of the goods and services.

- Signs that exclusively or as an essential element include signs and names that are used by everyone in the field of commerce or that serve to distinguish those who belong to a certain profession, art or trade group,
- Signs that contain the shape of the good arising from its original natural structure or the shape that is necessary to obtain a technical result, the shape of the good itself or the shape that gives the good its intrinsic value,
- Signs that mislead the public about the nature, quality or place of production, geographical origin of the goods or services,
- Signs for which authorization for use has not been obtained from the competent authorities and which are therefore to be rejected in accordance with Article 6 bis 2 of the Paris Convention,
- Signs which are outside the scope of Article 6 bis 2 of the Paris Convention, but which are of public interest, historical, cultural values and which contain other coats of arms, emblems or insignia for which the relevant authorities have not granted registration permission,
- Signs containing religious values and symbols,
- Signs contrary to public order and public morality.
- Signs consisting of a registered geographical indication or containing a registered geographical indication.

Reasons for absolute refusal arise from public order and are taken into consideration by the Institute.

1.2.2 Reasons for Relative Refusal

Cases that prevent the registration of a sign as a trademark because another person has a right on the sign based on any reason are called relative grounds for refusal. Unlike absolute grounds of refusal, relative grounds of refusal are not provisions based on public interest but are based on the right of priority that persons have exclusively over the trademark. Relative grounds of refusal, unlike absolute grounds of refusal, do not arise from the nature and characteristic of the sign, but from the fact that a third party has any right over this sign.

Relative grounds of refusal are asserted by any third parties who have rights. Relative grounds of refusal, unlike absolute grounds of refusal, are intended to protect the rights of the previous trademark owner. This situation enables the persons who have previously chosen a trademark to limit the trademark registration opportunities of any subsequent trademark owners. Thus, prior use is protected. The existence of an old right is not automatically taken into account. It is only taken into account upon the objection of the right holder.

Under Article 6 of Law Nr. 6769, in case of an objection by the owner of a trademark that has been registered or applied for registration, the trademark may not be registered in the following cases:

- The trademark applied for registration is identical to a trademark that has already been registered or for which an application for registration has already been filed and covers the same goods or services,

- If the trademark applied for registration is identical or similar to a trademark which has been registered or for which an application for registration has already been made, and is identical or similar to goods or services covered by a trademark which has been registered or for which an application for registration has already been made, if there is a likelihood of confusion by the public as to the trademark which has been registered or for which an application for registration has already been made, and if that likelihood of confusion includes a likelihood that it is related to a trademark which has been registered or for which an application for registration has already been made.

- An application has been filed by the trademark owner's commercial agent or representative for registration of the trademark in its own name without the trademark owner's consent and without a valid justification,

- Registration of an unregistered trademark or another sign used in the course of trade is requested;

a) if a right has been obtained on behalf of another person for this sign before the application date or before the priority date specified in the application for registration of the trademark,

b) gives the proprietor the right to prohibit later use of a trademark,

- If there is a situation in which an unfair benefit can be obtained due to the level of recognition that the registered trademark or the trademark applied for registration has reached in the society, which may harm the reputation of the trademark or may have consequences that may harm the distinctive character of the trademark applied for registration,

- If the trademark applied for registration covers a person's name, photograph, copyright, or any other industrial property right belonging to someone else,

- If an application identical or similar to the common trademark or guarantee mark has been filed within three years of the expiry of the common and guarantee marks,

- If an application for registration of the same or similar trademark for the same or similar goods and services is filed within two years after expiration of the term of protection of a trademark due to non-renewal, and

- Trademark applications made in bad faith.

The foregoing is within the scope of relative refusal, and it can be decided for invalidity of the trademark when requested and sued by the right holder. In addition to all these cases, the person claiming invalidity must be using the trademark seriously and sincerely. Failure to use the trademark seriously can be asserted as a defense against invalidity claims. In this article, serious and actual use will be briefly summarized, and then the "principle of actual (priority) right ownership" in the aforementioned article, which has developed with case law, will be specifically discussed together with case law decisions.

2. THE CLAIMANT MUST MAKE A SERIOUS AND ACTUAL USE OF THE TRADEMARK.

There are many regulations protecting the trademark right holder in our law. However, the trademark owner can benefit from this legal protection under certain conditions. In addition to the other conditions included in our article, there must also be an "actual and serious use" of the trademark. In the event that the trademark is registered but not actively used in commercial life, it is not a sincere request to expect the protection of this unused trademark, and it will also be contrary to the good faith.

At the same time, requesting invalidation of another trademark based on a trademark that is not used and no benefit is obtained will constitute "abuse of right".

Our law does not protect the abuse of right, and these claims without any legal benefit will be rejected.

Article 9/1 of the Industrial Property Law Nr. 6769 reads as follows: "A trademark which has not been seriously used by the trademark owner in Turkey in terms of the goods or services for which it is registered within five years from the date of registration without a justifiable reason, or the use of which has been interrupted for a full period of five years, shall be decided to be canceled".

According to the foregoing provision, it is set out that trademarks that are not used seriously and whose use is interrupted for a full period of 5 years will be canceled. This regulation aims to ensure the honest functioning of commercial life and competition environment. [4]

The decision, bearing the Basis number 2015/10614 and the Decision number 2016/5566 and dated 23.05.2016, of the 11th Civil Chamber of the Court of Cassation reads as follows: "Pursuant to Article 14 of the Decree Law Nr. 556, the trademark owner must, as a rule, use his registered trademark domestically or in exports, by himself or by a third party with his permission, for the goods and services registered, in accordance with their functions, in a serious and economic manner."

Serious use of the trademark is also included in the IPL Nr. 6769 and the relevant regulation is in parallel with the EU Trademark Directive and Trademark Regulation.

The obligation of serious use of the trademark is to prevent the trademark right holder from monopolizing the trademark arbitrarily, to prevent unfair competition by pretending to use a trademark that is not actually used, and to prevent the cancellation sanction due to non-use.

As mentioned, non-use of the trademark in an actual, serious and sincere manner and non-use for a full period of 5 years may be used as a defense in invalidation cases. Because the plaintiff does not have any interest worth protecting and there is no legal interest in the lawsuit filed.

3. PRINCIPLE OF ACTUAL (PRIORITY) RIGHT OWNERSHIP

Although protection of the trademark right in our law is basically dependent on registration, exceptional regulations and jurisprudence have developed regarding protection of unregistered trademarks as a matter of equity. Although they are not registered, trademarks that are actively used throughout the country, have gained recognition and continue their commercial life in this way are protected even if they are not registered. This is referred to in our literature as the principle of actual (priority) right ownership.

Under the Paragraph 3 of the Article 6 of the Industrial Property Law, priority right is listed as one of the reasons for relative refusal: "If a right has been obtained for an unregistered trademark or another sign used in the course of trade before the application date or the priority date, if any, the trademark application shall be rejected upon the objection of the owner of this sign."

The decision, bearing the Basis number 2017/3943 and the Decision number 2019/1154 and dated 13.02.2019, of the 11th Civil Chamber of the Court of Cassation states that the condition of intensive and strict use within the country is sought for actual right ownership:

"... in accordance with the principle of actual right ownership, in the event that a prior right has been obtained on the sign before the trademark application and as a result of intensive and frequent use of the sign subject to the trademark in terms of the goods and services within the scope of the registration, the person who has the actual right on that sign is granted priority right. However, the sign in question must have been used intensively, ex parte and without interruption domestically and across a geography wider than the local area."

Actual right ownership is basically a principle developed within the framework of prevention of unfair competition and good faith.

This principle eliminates the risk that commercial enterprises, which are recognized with a certain name and logo in commercial life, actively operate and gain a certain level of recognition in the consumer mass, will be deprived of legal protection just because they have not registered their trademark and the risk of damage to competition with the registration of their trademark by other enterprises [5].

Under the Decision, bearing the Decision number 1998/5146, of the 11th Civil Chamber of the Court of Cassation, it was explained that the actual right holder is the person who makes the trademark recognizable before the public:

"... Swiss-Turkish trademark law is based on three important principles regarding acquisition and protection of the right to a trademark. The right of priority over the trademark belongs to the person who has created and used the trademark and made it popular across the market. This is called the actual right holder, and this registration has a constitutive effect. However, this registration can only provide a conditional right to the right holder at the beginning. Until the date when the actual right holder will file a lawsuit and register this trademark, its ownership of the constitutive effect continues.

This is because actual right ownership does not give the right to another independent and individual ownership. The actual right holder of the trademark may request abandonment of the trademark that is registered later, if he registers the same or an indistinguishably similar trademark as a trademark..."

As can be seen under the decision, the right of priority on the trademark belongs to the person who has created the trademark and made it known across the market.

The owner of the priority right is the actual owner of the right and the applications of trademark applicants other than the actual right owner will face relative refusal, and the actual right owner will be able to claim invalidity against other applicants who have registered the trademark.

Under the Decision, bearing the Basis number 2017/76, and the Decision number 2019/444, and dated 11/04/2019, of the of the General Assembly of Civil Chambers of the Court of Cassation, it has been introduced under the case law that the bond of trust, labor and interest provided by the trademark, which has gained public recognition and awareness, before the consumers, is protected, thus guaranteeing prevention of unfair competition:

"Although it is essential that trademarks are mainly used to distinguish one good or service from another, sometimes customers may associate a trademark not only with the good or service but also with the enterprise providing that good or service.

Customers may prefer a branded good or service only because of their trust and appreciation of the business that supplies it.

Even if it is known that the businesses are different from each other, the result will not change if the similarity of the signs used leads the customer to think that there is an economic or organic connection between these businesses...

As stated in Article 8/1-b of the Decree Law Nr. 556, the likelihood of confusion by the "public" is taken into account in determining whether a trademark is similar to another trademark.

The criterion for the likelihood of confusion by the public is to take into account that the public is the consumer, not the relevant person or expert.

What is important in the likelihood of confusion is the possibility that the public may establish a connection between these two signs in any way and for any reason.

The word "likelihood" here is a word used carefully and specifically, and the shape, sound, meaning, general appearance, connotation and the impression of being in a series are evaluated within this scope." [6]

CONCLUSION

As a result, the trademark right is regulated in detail in our law, and it is aimed both to protect and develop commercial life and to protect intellectual property rights which fall under the category of absolute rights.

In this context, prohibition of unfair competition, good faith, prohibition of abuse of right, and the principles of equity have shed light on the norms and principles.

Trademark invalidity cases are basically divided into two as relative and absolute invalidity reasons.

Briefly, these cases are enumerated and the principle of actual and serious use and the principle of actual (priority) right ownership, which is the reflection of the principles of equity, prevention of unfair competition and good faith in trademark law, are specifically examined.

Although the main rule is protection of registered trademarks, the priority right holder may also benefit from the legal protection provided by the Law if certain conditions are met.

For further information:
Att. Gamze Nur Şan
info@ozgunlaw.com

References:

1. Elif AYKURT KARACA, https://iprgezgini.org/tag/koku-markalari/, May 2018

2. Şanal, Osman, Markanın Hükümsüzlüğü, Adalet Publishing House, Ankara 2004, p. 83

3. KIRCI, N. Berkay, Markanın Hükümsüzlüğü, Journal of TBB (Union of Turkish Bar Associations), 2006, Issue 66

4. YÖRDEM, Yılmaz, Markanın Kullanım Yükümlülüğü Ve Kullanılmamasının Hukuki Sonuçları, Emrah BİÇİMLİ, Journal of the Turkish Justice Academy, July 2022, 51st Issue]

5. KARIMOV, Elnur, Sınai Mülkiyet Kanununun 155. Maddesi Çerçevesinde Önceki Hakkın Etkisi, Ankara Yıldırım Beyazıt University Journal of Commercial and Intellectual Property Law, 2022; 8(2)

6. KARA, Elif, " Marka Hukukunda Gerçek Hak Sahipliği ", Marmara University Institute of Social Sciences, Department of Private Law, Division of Applied Commercial Law, Master's Thesis, 2015

THE RIGHT OF PRIORITY ON THE TRADEMARK BELONGS TO THE PERSON WHO HAS CREATED THE TRADEMARK AND MADE IT KNOWN ACROSS THE MARKET. THE OWNER OF THE PRIORITY RIGHT IS THE ACTUAL OWNER OF THE RIGHT AND THE APPLICATIONS OF TRADEMARK APPLICANTS OTHER THAN THE ACTUAL RIGHT OWNER WILL FACE RELATIVE REFUSAL, AND THE ACTUAL RIGHT OWNER WILL BE ABLE TO CLAIM INVALIDITY AGAINST OTHER APPLICANTS WHO HAVE REGISTERED THE TRADEMARK.

META ANNOUNCES NEW CONTENT RESTRICTIONS FOR TEENS AS REGULATORY PRESSURE MOUNTS

Meta is under pressure both in the United States and Europe over allegations that its apps are addictive and have caused fuel a youth mental health crisis.

Attorneys in U.S. including California and New York sued the company in October 2023, claiming it repeatedly misled the public about the danger of its platforms. More recently, a former engineering director and consultant for the social media company testified in a congressional hearing in November 2023 that company was aware of harassment and other harms facing teens on its platforms but failed to act against them.

Whilst in Europe, the European Commission has sought information on how Meta protects children from illegal and harmful content.

Meta Platforms said it would hide more content from teens on Instagram and Facebook, after regulators around the globe pressed the social media giant to protect children from sensitive and illegal content on its apps.

All teens will now be placed into the most restrictive content control settings on the apps and additional search terms will be limited on Instagram. Meta will remove content around self-harm, suicide, and eating disorders from teen users on Instagram and Facebook, even if it's shared by a user they follow, stating that while content on self-harm "can help destigmatize these issues," "it's a complex topic and isn't necessarily suitable for all young people."

Additionally, when teen users search for terms related to self-harm, suicide, and eating disorders, Meta will hide related results and redirect the search to a helpline or other resources for users to seek support.

While some of the restrictions are already applied to new teen users who sign up for Instagram and Facebook, Meta said the additional protections will roll out to all teen users in the coming weeks and months.

Sources: ***https://www.reuters.com/technology/meta-adds-measures-protect-teens-harmful-content-facebook-instagram-2024-01-09/***
https://about.fb.com/news/2024/01/teen-protections-age-appropriate-experiences-on-our-apps/

ENFORCEMENT OF ANY DECISION RENDERED AS A RESULT OF RENT DETERMINATION LAWSUITS

1. Introduction

When we consider that renting is the most common method used in our country in order to meet the need for housing, which is one of the basic needs of people, it automatically emerges that rental contracts have a social importance different from other types of contracts. While the rental contracts set out the relationship between the landlord and the tenant, the rental fee constitutes an essential element of the contract.

Especially under today's economic conditions, rental prices have increased significantly and rapidly as a result of the high course of inflation and the exponential increase in commodity prices. As a result of this, the rental fees have become quite low in a few years against their peers. In order for this situation to become bearable for the landlord, it is permitted to bring the rental fees closer to the level of their peers through rent determination lawsuits to be filed subsequently.

2. Determination of the Rent and Rent Determination Lawsuit

Article 344 of the Turkish Code of Obligations Nr. 6098 (the "Code") sets out the principles regarding determination of the rental fee to be applied in the renewed rental period in residential and roofed workplace rents. Pursuant to the provision, the legislator has limited the rate of increase to be determined by the parties for the rent for residences and roofed workplaces to the twelve-month average rate of change in the consumer price index published by the Turkish Statistical Institute. This limitation on the rate of increase is valid for each renewal period. The rent increase rates that exceed the limit of the consumer price index, as stipulated under the Code, are invalid, and although the increase provision is not completely invalid, it will be deemed invalid to the extent that it exceeds the limit in accordance with the "principle of reduction to the maximum limit".

Article 344/3 of the TCO, which is the subject of this article, is regulated to establish the contractual balance in favor of the landlord for rental contracts with a term longer than 5 years or renewed after 5 years. Pursuant to this provision, under rental contracts with a term longer than 5 years or renewed after 5 years, the rental price to be applied in the new rental period will be determined by the judge in accordance with equity, taking into consideration the rate of change in the price index according to the twelve-month averages, the condition of the rented property and the comparable rental prices.

2.1. Request in Rent Determination Lawsuits

The subject of the rent determination lawsuits is mainly determination of the new rental price to be applied between the parties. In addition, collection of the rent receivable, eviction and similar claims may not be included in this lawsuit. Therefore, the plaintiff has a limited claim under the rent determination lawsuits. Pursuant to the article 344/3 of the TCO, the subject of the rent determination lawsuit is determination of the rental price by the judge after expiration of the 5-year period, taking into account the precedent rental prices. The decision, dated 16.03.2021, and bearing the Basis number 2017/2792 and the Decision number 2021/267, of the General Assembly of Civil Chambers of the Court of Cassation reads as follows; *"In these cases, only determination of the rental price that will be valid during the relevant rental period is requested and the lawsuit for determination of the rental price has a limited scope of subject."* [1] In addition, upon determination of the rent for the new period, it is possible to apply the rent determination decision retroactively from the beginning of the rental year in which the lawsuit was filed. In order to make a ruling on this matter, the plaintiff must have made a request.

2.2. Period for Filing a Lawsuit and the Effect of the Decision

In terms of the date from which the determination decision to be made as a result of the rent determination lawsuit will be applied, the date of filing and whether there is an increase clause under the contract are important. The principles regarding this issue are set out under the Article 345 of the Code. As can be understood from the provision, the date of filing and the presence or absence of an increase clause under the contract are important in terms of the date after which the determination decision given in the rent determination lawsuit will be applied. If there is a provision under the contract that the rent will be increased in the new rental period, the rent determination lawsuit must be filed within the new rental period pursuant to the Article 345/3 of the TCO. The rent to be determined by the court under the lawsuit will be valid from the beginning of this new rental period. In the absence of a mutual agreement on increase of the rent under the rental contract executed by and between the parties, pursuant to the article 345/2 of the TCO, a rent determination lawsuit must be filed at least 30 days before the start of the new rental period or a notice must be given within the same period that the rent will be increased in the new rental period.

However, if these conditions are met, the rent determined in the lawsuit will be effective retroactively from the beginning of the new rental period.

2.2.1. With respect to the Contracts with Mutual Agreement on Rent Increase

If the parties have included a provision under the contract that the rent will be increased in the new rental period, the decision of the court under the rent determination lawsuit to be filed at any date within the renewed rental year may be valid as of the beginning of the renewed rental year. This is because the tenant now knows that the rent will be increased in the new period due to the provision under the contract [2]. As mentioned above, in order for the determined rent to operate retroactively, the plaintiff must have made a request in this regard.

The rent determination lawsuit may not be filed in the new rental year starting after expiration of the 5-year period but may also be filed in the following years. In this case, the plaintiff may request that the rent determination decision be applied retrospectively from the beginning of the renewed rental year at the earliest. Otherwise, it cannot be requested that the rent determined by the court be applied retroactively to the previous rental years. The decision, dated 28.05.2019, and bearing the Basis number 2017/8071 and the Decision number 2019/5079, of the 3rd Civil Chamber of the Court of Cassation reads as follows:
"Although it cannot be decided to determine the rental price for the period starting from 01.09.2014 with the lawsuit filed on 09.12.2015, the Court should decide to determine the rental price for the next period (01.09.2015) by asking the plaintiff whether s/he wants to determine the rental price for the next period (01.09.2015), taking into account the statements of the parties." [3]

On the other hand, the rent increase rate already agreed upon under the contract is not affected by the decision rendered as a result of the rent determination lawsuit. Even if the rental amount is intervened with the rent determination lawsuit, the rate of increase stipulated by the parties continues to be applied in the same way in the next renewal periods. The decision, bearing the Basis number 2014/12999, and the Decision number 2015/10017, of the 6th Civil Chamber of the Court of Cassation reads as follows:

"Under the decision of the Court of First Instance numbered ... E.K., it was decided to adapt the annual rent as 1.850.000.000 as of 16.01.1992, and according to the established case law of the Court of Cassation, since the decision to adapt or determine in adaptation or determination lawsuits will not eliminate the rate of increase under the contract, it is necessary to increase the determined price in the following periods at the rate of increase agreed by the parties under the rental contract ..." [4]

2.2.2. With respect to the Contracts without Mutual Agreement on Rent Increase

Under the contracts where there is not any mutual agreement on rent increase, in order for the judgment rendered as a result of the rent determination lawsuit to have retroactive effect, the plaintiff must take action within the periods, as stipulated under the article 345/2 of the TCO.
The decision, dated 06.03.2017, and bearing the Basis number 2017/1736 and the Decision number 2017/2469, of the 3rd Civil Chamber of the Court of Cassation reads as follows:

"... In other words, if there is a rent increase clause under the contract, the lawsuit may be filed until the end of the period requested to be determined without the need for notice, if there is no increase clause, the lawsuit filed 30 days before the start of the period must be served with the notification of the lawsuit petition or the notice that the rent will be increased with the notice and the lawsuit must be filed until the end of the period by serving this notice 30 days before the start of the period." [5]

It is stipulated by the decision of the Court of Cassation that the plaintiff must file a lawsuit 30 days before the start of the new rental period and serve the lawsuit petition to the tenant or the notice that the rent will be increased must be served to the tenant within the same period. Thus, if the tenant does not find the requested increase appropriate, it is allowed to exercise its right to terminate the rental contract and evict the immovable property by notifying 15 days before the end of the contract.

If the landlord has requested the rent determination to be valid as of the new rental period under the determination lawsuit filed by the landlord despite the failure to comply with the stipulated periods, in accordance with the decision, dated 02.12.2019, and bearing the Basis number 2019/3381 and the Decision number 2019/9536, of the 3rd Civil Chamber of the Court of Cassation reading as follow:

"... in order for the plaintiff to request the determination of the rental price as of 01.01.2014, since there is no notice sent in due time or a lawsuit filed, it is not possible to determine the retroactive rental price, in this case, the court, by having the plaintiff explain his request and making a separate evaluation in terms of both requests, if the plaintiff requests the determination of the rental price for the period starting from 01.01.2015, to decide for this period..." [6] the judge should ask the plaintiff whether s/he wishes to continue with the rent determination lawsuit for the next rental year.

2.2.3. In case the Rental Contract Has Expired

Pursuant to the article 344/3 of the TCO, the rental contract subject to the rent determination lawsuit might have been terminated before or during the lawsuit. In this case, the court may determine the rent for the new period until the date of termination of the contract, which is the subject of the dispute between the parties. As a result of the determination to be made, it will be possible to demand and collect the difference between the amounts paid by the tenant and the amounts that the tenant should pay in accordance with the judgment given.

3. Judgment to be Rendered as a Result of the Rent Determination Lawsuit

As a rule, the judgment to be rendered in a rent determination lawsuit is formative and does not contain a judgment of performance. The rent determination decisions rendered in rent determination lawsuits do not determine the legal relationship as in other determination lawsuits. Its purpose is to make the rent element, which is indefinite in the renewed rental period, definite. [7] Based on the foregoing, rent determination decisions do not create a new legal situation regarding the existing legal relationship or change an existing legal situation. In addition, since the decision in the determination lawsuits does not have the nature of performance, it may be subject to debt enforcement proceedings through enforcement proceedings without judgment, rather than enforcement proceedings with judgment.

The decision, bearing the Basis number 2017/2792 and the Decision number 2021/267, of the General Assembly of Civil Chambers of the Court of Cassation reads as follows: *"...The rent determination decisions rendered in rent determination lawsuits do not determine the legal relationship as in other determination lawsuits. . Its purpose is to make the rent element, which is indefinite in the renewed rental period, definite. ... Thus, rent determination decisions are close to the decisions rendered at the end of constructive actions, not to the conviction decisions rendered at the end of actions for performance. Therefore, under the lawsuit filed for determination of the rental price, a new legal situation arises regarding the existing legal relationship, rather than a decision on a legal relationship as in the determination lawsuit..."* [8]

4. Enforcement Proceedings for the Determined Rent Difference Receivables

As stated under the previous headings, the current rent determined by the court is valid as of the date of the judgment, unless the plaintiff makes a separate request for retroactive enforcement. For the enforcement of the rent difference receivables to be retroactively effective, the rent determination decision must be finalized. The decision, dated 12.11.1979, of the General Assembly on Unification of Judgments of the Court of Cassation reads as follows: *"In the second meeting of the General Assembly on Unification of Judgments of the Court of Cassation held on 12.11.1979, it was decided by absolute majority that in order for the rent difference receivable determined by the court decisions regarding the determination of the rent to be deemed to have reached the time of performance, it is not only sufficient that the time has come when the creditor can request the debtor to perform, but also that the decision must become final."* [9]

With the foregoing decision, this issue, on which different case laws have emerged, has been finalized. Therefore, until the decision is finalized, the default of the tenant who pays the old rent cannot be mentioned and the contract cannot be terminated due to underpayment. Because the new rent becomes due at the earliest upon the finalization of the decision rendered in the lawsuit. [10] The determination decision of the court as a result of this lawsuit is effective retroactively as of the beginning of the new rental period.

Default interest starts to be charged as of the date the decision becomes final. The landlord may file a lawsuit for this difference after finalization of the rent amount, initiate enforcement proceedings, or even terminate the contract by citing the difference that is not paid within the given period based on the article 315 of the TCO.

The decision, dated 24.11.1995 and bearing the Basis number 1994/2 and the Decision number 1995/2, of the General Assembly on Unification of Judgments of the Court of Cassation reads as follows: *"It was decided by majority of votes on the day of 24.11.1195 and in the third meeting that the rent difference receivable, which became evident with the court decision regarding the rent determination, should be charged interest from the date of finalization of the rent determination decision, without the need for further notice."* [11] and the matter of whether a separate notice is required for the default of the due debt has been finalized. As mentioned under the decision, the date of finalization of the determination decision is the starting date of the interest to be accrued.

In other words, the tenant, whose rent is increased retrospectively, will not owe interest for the underpaid rents in the past.

3.3. Interest to be Imposed on Rent Difference

Pursuant to the case law within the scope of the decision, dated 24.11.1995 and bearing the Basis number 1994/2 and the Decision number 1995/2, of the General Assembly on Unification of Judgments of the Court of Cassation, the tenant will be in default upon the court's determination of the past rent difference receivables upon request in the rent determination lawsuit and as of the finalization of the determination decision.

Default interest starts to accrue from the date of finalization of the judgment. The determination of the default interest rate varies depending on whether there is a mutual agreement on default interest under the rental contract and whether the rental contract is in the nature of commercial business.

If the rental contract is not in the nature of commercial business and the rental contract does not include an article on default interest, the rate regulated under the Article 1 of Law Nr. 3095 and known as "legal interest" in practice should be applied. In cases where the rental contract is in the nature of commercial business, if there is a mutual agreement on the default interest under the rental contract, the interest rate under the contract will be applied.

If no rate is set out under the contract, the interest rate applied in short-term advance transactions, as published by the Central Bank of the Republic of Türkiye, with reference to the Law Nr. 3095 should be applied.

For further information:
Berfin Dicle Onar, Legal Intern
info@ozgunlaw.com

References:

1. The decision, dated 16.03.2021, and bearing the Basis number 2017/2792 and the Decision number 2021/267, of the General Assembly of Civil Chambers of the Court of Cassation
2. Özyakışır, 2019, Konut ve Çatılı İşyeri Kira Sözleşmelerinde Kira Bedeli
3. The decision, dated 28.05.2019 and bearing the Basis number 2017/8071 and the Decision number 2019/5079, of the 3rd Civil Chamber of the Court of Cassation
4. The decision, bearing the Basis number 2014/12999 and the Decision number 2015/10017, of the 6th Civil Chamber of the Court of Cassation
5. The decision, dated 06.03.2017 and bearing the Basis number 2017/1736 and the Decision number 2017/2469, of the 3rd Civil Chamber of the Court of Cassation
6. The decision, dated 02.12.2019 and bearing the Basis number 2019/3381 and the Decision number 2019/9536, of the 3rd Civil Chamber of the Court of Cassation
7. Doğan, 2023, Kira Hukuku Davaları
8. The decision, bearing the Basis number 2017/2792 and the Decision number 2021/267, of the General Assembly of Civil Chambers of the Court of Cassation
9. The decision, dated 12.11.1979, of the General Assembly on Unification of Judgments of the Court of Cassation
10. Yeniocak, 2023, Kira Bedelinin Belirlenmesi Kira Tespit ve Uyarlama Davaları
11. The decision, dated 24.11.1995 and bearing the Basis number 1994/2 and the Decision number 1995/2, of the General Assembly on Unification of Judgments of the Court of Cassation

RIGHTS OF MINORITY SHAREHOLDERS IN JOINT STOCK COMPANIES UNDER THE TURKISH COMMERCIAL CODE

Shares in joint stock companies are generally issued in registered or bearer form. Registered shares belong to the persons registered in their names and these shareholders are directly related to the company. In joint stock companies, shareholders are the persons who contribute to the capital of the company and have rights corresponding to their shares. Minority rights in joint stock companies generally serve the purpose of ensuring equal and fair treatment of shareholders. In this context, minority shareholders are generally protected in terms of influence on company decisions, access to information, transparency and fairness. Pursuant to the Article 411 of the Turkish Commercial Code Nr. 6102 ("TCC"), shareholders who constitute at least 10% of the share capital in non-public companies and at least 5% in publicly traded companies are defined as "scarcity" or "minority".

The Turkish Commercial Code contains regulations that aim to protect minority rights. The reason for this is that minority shareholders face certain risks. Economic risks come first among these risks. Joint stock companies are managed according to the majority principle. Article 418 of the Turkish Commercial Code sets out as follows: "Decisions are made by the majority of the votes present at the meeting." As can be understood from this provision, the rights of minority shareholders require protection.

A minority share represents a certain percentage of the company's total shares. Minority shareholders are generally less influential in company management. However, legal regulations and the bylaws of the company grant various rights to minority shareholders. Among the rights of minority shareholders are such important rights as attending general assembly meetings, voting, and receiving information about the company's activities. These rights support minority shareholders in participating in the management of the company and protecting their interests.

In particular, since decisions taken at general assembly meetings may affect minority shareholders, it is important that minority shareholders participate in these meetings and vote effectively. This will ensure fairer and more transparent corporate governance.

Under the Turkish Commercial Code Nr. 6102, the rights granted to minority shareholders in joint stock companies are the right to obtain and review information, the right to call the general assembly for a meeting and have an item added to the agenda, the right to request appointment of a special auditor, the right to file a lawsuit for dissolution of the company for just cause, the right to request issuance of registered share certificates, the right to attend and vote in the general assembly meetings, and the right to request postponement of discussion of the financial statements.

THE RIGHT TO OBTAIN AND REVIEW INFORMATION

The right to obtain and review information ensures a more balanced relationship with the company's management and ensures the continuity of the company and the protection of trust among shareholders. In order for the shareholder to exercise her/his rights consciously and effectively, s/he should also be informed about the activities of the company.

For this purpose, a regulation under the main heading "Right to obtain and review information" has been included under the Article 437 of the TCC, and this right may not be abolished or restricted by the articles of association or resolutions. Shareholders have the right to physically examine the company's financial statements, annual reports and audit reports at least fifteen days before the date of the general assembly meeting. Each shareholder may request information from the board of directors regarding operation of the company at the general assembly meeting. The shareholder may request information from the board of directors on the company's affairs and from the auditors on the manner and results of the audit, and in the case of a group of companies, the obligation to provide information also covers affiliated companies within the framework of the Article 200 of the TCC. The information to be provided must be qualified, attentive and truthful in accordance with the principles of integrity and accountability. The subject matter of the right to information, which serves the purpose of enabling the shareholder to exercise her/his rights in an informed manner and to exercise her/his will in the general assembly with accurate data, consists of all works and transactions that may be considered within the scope of management and auditing activities. [1]

If information is provided to a shareholder outside the scope of the general assembly, such information must be provided to the other shareholders who make a request, within the same scope, even if there is no item on the agenda. [2] Shareholders whose requests for information or review are left unanswered or rejected or delayed, and who cannot receive information for these reasons, may apply to the commercial court of first instance, where the company's headquarters is located, within ten days following rejection of the request, and in other cases after a reasonable period of time. The decision, dated 25.12.2019 and bearing the Basis number 2019/264 and the Decision number 2019/1238, of the 4th Commercial Court of First Instance of the Anatolian Side of Istanbul reads as follows:

"It has been considered under the ------- records taken into the file also by the plaintiff that the plaintiff is a shareholder of the defendant company -------, and that the plaintiff applied to the defendant company on --------- and submitted his request for information, and the plaintiff's request was notified to the defendant company on ----.

Although the plaintiff waited for a response, the defendant company did not give any response to the plaintiff's notice, the plaintiff filed the lawsuit 21 days after expiration of the period given in the notice, and this period was considered as a reasonable time within the scope of the article 437 of the TCC and the case was examined on the merits.

Although the petition and the preliminary proceedings report were served to the defendant company, the defendant company did not put forward any defense for protection of the plaintiff's request to remain indifferent to the plaintiff's request, nor did the company reveal that it announced the financial statements. As a matter of fact, it is understood that there is no issue in this regard in the -- records included in the file.

Accordingly, since it is understood from the entire file that the claimant's request falls within the scope of the Article 437 of the TCC, it has been ordered and adjudged that the legal action be accepted, and that " a copy of ------ of the defendant company for the year --- be served to the plaintiff at the defendant's expense via notary public or by mail within one week from the notification of the reasoned decision to the defendant company".

JUDGMENT: It is hereby ordered and adjudged for the reasons explained hereabove that

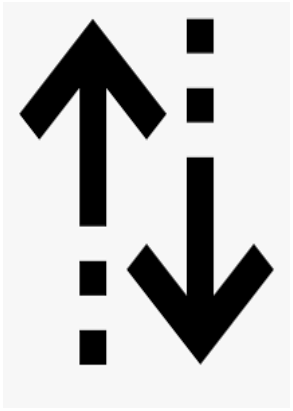
1-The legal action be ACCEPTED" [3]

In this context, the 4th Commercial Court of First Instance of the Anatolian Side of Istanbul decided to accept the legal action filed after the plaintiff's request for information and review remained unanswered.

The Right to Call the General Assembly to Meeting and to Have Items Added to the Agenda

The rights of minority shareholders to call the general assembly to meeting and to have items added to the agenda are generally determined within the framework of the articles of association of the companies and the related statutory regulations. In this context, minority shareholders may request the board of directors to convene the general assembly meeting in writing, specifying the reasons for delay and the agenda, or if the general assembly is already convened, to add to the agenda of the meeting the issues they want to be discussed and resolved at the general assembly meeting. Pursuant to the Turkish Commercial Code Nr. 6102, the minority's call request and requests to add items to the agenda must be made through a notary public.

Right to Request Appointment of a Special Auditor



The Article 438 of the Turkish Commercial Code reads as follows: "Each shareholder may request the general assembly to clarify certain events through a special audit if it is necessary for exercise of shareholding rights and if the right to obtain or review information has been previously exercised even if it is not included in the agenda. If the general assembly approves the request, the company or each shareholder may, within thirty days, request appointment of a special auditor from the commercial court of first instance where the company headquarters is located." The purpose of requesting appointment of a special auditor is for the shareholders to be informed about the events that directly or indirectly concern the company and consequently to exercise their shareholding rights.

In this context, the decision, bearing the Basis number 2000/5472 and the Decision number 2000/6335, of the 11th Civil Chamber of the Court of Cassation reads as follows:

"As emphasized in the decision, dated 15.04.1982 and bearing the Basis number 1269 and the Decision number 1727, of our Chamber, according to the provision of the Article 348/2 of the TCC, the existence of the reasons for appointment of a special auditor by the minority shareholders is not required to be proven conclusively. The legislator has deemed evidence and indications that more or less confirm the facts put forward for appointment of a special auditor as sufficient. Whether or not the matters set forth in the text of the said article are present in the case will be revealed as a result of the examination and research to be conducted by the special auditors. In addition, since the facts that will be the basis for appointment of a special auditor cannot be mentioned in the final judgment, it is difficult to find the basis for seeking conclusive evidence. In the requests to investigate the degree of authenticity of the balance sheet, which fall within the field of work of the special auditors and are related to the result thereof, it is obligatory to be even more moderate in terms of appointment.

Since the plaintiff claims that the balance sheet does not reflect the real situation and puts forward a number of allegations, and since it was stated that some of the income and expense items in the balance sheet may be incorrect due to incorrect placement during the expert examination commissioned by the court, although this situation alone justifies the request for appointment of a special auditor, it was not correct to decide to reject the case as written, while it should be decided to accept the case, and the decision should be reversed in favor of the plaintiff for the reason explained." [4]

It is ruled that the existence of the reasons for the request of the minority shareholders for appointment of a special auditor does not have to be conclusively proven. The legislator has deemed evidence and indications that more or less confirm the facts put forward for appointment of a special auditor as sufficient.

Right to File a Lawsuit for Dissolution of the Company for Just Cause

Article 531 of the Turkish Commercial Code sets out as follows: *"In the presence of justified reasons, the holders of the shares representing at least one tenth of the capital and one twentieth in publicly traded companies may request the commercial court of first instance in the place, where the company's headquarters is located, to decide on dissolution of the company. Instead of dissolution, the court may decide that the plaintiff shareholders be paid the real value of their shares as of the date closest to the date of the decision and that the plaintiff shareholders be dismissed from the company, or may decide on another acceptable solution appropriate to the situation."*

In this context, minority shareholders are entitled to file a termination lawsuit. What should be understood from the concept of just cause is that the purpose of the partnership at the beginning of the partnership can no longer be realized by the parties. In this case, the existence of just cause is accepted.

In this context, the decision, bearing the Basis number 2019/2942 and the Decision number 2021/1647 K, of the 11th Civil Chamber of the Court of Cassation reads as follows:

"The lawsuit is related to the request for termination of the joint stock company for just cause based on the Article 531 of the TCC. Since a joint stock company is a capital partnership, as a rule, it is accepted that the personal characteristics of the shareholders cannot play a role in the functioning of the partnership. Therefore, in large-scale joint stock companies with a large number of shareholders, personal reasons alone do not constitute just cause. However, in family businesses and small partnerships, there is a significant similarity with personal partnerships.

In this respect, depending on the characteristics of the concrete case and the type of company, it should be accepted that even in a joint stock company, which is a capital partnership, personal reasons will also be considered as just cause and the dissolution of the partnership, the dismissal of the plaintiff shareholders from the partnership or other acceptable solution appropriate to the situation will be decided.

After these explanations, when it comes to the concrete case, the defendant company, of which the plaintiff is a partner, is a family company. It should be accepted that the problems between the partners of the company, especially the dispute between the partners and the insult arising from the extra judicial partner, will constitute just cause for such companies. In this context, the grouping among the partners that occurred after the mutual insult incident between the plaintiff and the extra judicial partner ..., which was transferred to the criminal court, constitutes just cause for termination as a whole.

However, it is essential to ensure the continuity of the company and considering that termination is the last resort, an evaluation should be made in accordance with the Article 531 of the TCC and a decision should be made according to the result, while it was not correct for the Regional Court of Justice to decide to reject the appellate requests made against the decision given by the Court of First Instance to dismiss the case on the grounds that justified reasons did not occur, and it required a reversal." [5]

The Court of Cassation interprets the Article 531 of the TCC more broadly in family companies.

However, in terms of joint stock companies with a large number of shareholders, since a joint stock company is a capital partnership, it accepts that the personal characteristics of the shareholders cannot play a role in the functioning of the partnership.

Therefore, it adopts the principle that personal reasons alone do not constitute just cause in large-scale joint stock companies with a large number of shareholders.

Right to Request Postponement of Discussion of the Financial Statements

The minority representing one tenth of the share capital has the right to request that the balance sheet discussions be postponed for at least one month in the general assembly meeting.

In this context, the request for postponement of the balance sheet discussions may result in postponement of all matters to be discussed in the general assembly meeting.

The right of the minority shareholders, as set out under the Article 337 of the TCC, to request postponement of discussion of the financial statements does not stipulate the right to request postponement, provided that the right holder shows a reason.

In this case, the minority shareholder may request postponement of discussion of the financial statements without any justification.

In the case law wording, bearing the Basis number 2015/7411 and the Decision number 2016/3647, of the 11th Civil Chamber of the Court of Cassation, it is stated that there is no need to show justification when requesting postponement;

"According to the allegation, defense and the entire file scope, the court held that in Article 420/1 of the TCC Nr. 6102, " discussion of the financial statements and related matters shall be postponed for one month upon the request of the shareholders holding 1/10 of the capital and 1/20 of the capital in publicly traded companies, upon the decision of the chairman of the meeting without the need for the general assembly to take a decision." and Article 413 (3) titled "Agenda" states that " dismissal of the members of the board of directors and election of new ones shall be deemed to be related to discussion of the year-end financial statements. ", and in the concrete dispute, it was announced under paragraph 1 of the minutes of the general assembly meeting dated 25/03/2013 that discussion of these issues was postponed to one month later upon the request of the plaintiffs, and it was decided to accept the lawsuit on the grounds that it would not be possible to take a decision on dismissal of the members of the board of directors and election of new ones in accordance with the Article 413/3 of the TCC, and that it would not be possible to take a decision on election of new members together with the old members of the board of directors in the ordinary general assembly subject to the lawsuit in the face of the regulation of paragraph 413/3 of the TCC.

The decision was appealed by the defendant's attorney.

According to the information and documents under the case file, the fact that there is nothing contrary to the procedure and the law in the discussion and evaluation of the evidence relied on in the justification of the court decision, and that in the concrete case, all of the candidates for the Board of Directors members have fulfilled the same duty in the previous operating period and their re-election as directors in the same general assembly despite the postponement, all appellate objections of the defendant's attorney are not relevant.

For the reasons explained hereinabove, all appellate objections of the defendant's attorney are rejected and the judgment, which is in accordance with the procedure and law, is APPROVED," [6]

and dismissed the appellate request. Thus, minority shareholders may request postponement of discussion of the financial statements without providing any justification.

CONCLUSION

Turkish Commercial Code Nr. 6102 sets out many innovations on minority rights in parallel with the contemporary and modern legal systems.

As a matter of fact, since joint stock companies are managed with a pluralistic approach, protection of minority rights holders becomes even more important.

In this context, minority rights in joint stock companies ensure transparency, fair treatment and effective participation. In joint stock companies governed with a pluralist approach, the rights of the minority are protected both by the articles of association of the company and the Turkish Commercial Code and the related laws. In this context, if minority shareholders, who have important rights, exercise these rights effectively, there will be a transparent and fair order within the company.

For further information:
Ebru Erkmen, Legal Intern
info@ozgunlaw.com

References:

1. Bahtiyar, Mehmet; Ortaklıklar Hukuku, 21st Ed., Istanbul 2021, p.296

2. Atalay, Oğuz "Anonim Şirketlerde Bilgi Alma ve İnceleme Haklarının Mahkeme Aracılığıyla Kullanımı" Journal of the Faculty of Law of Dokuz Eylul University, Special Issue 2014

3. The decision, bearing the Basis number 2019/264 and the Decision number 2019/1238, of the 4th Commercial Court of First Instance of the Anatolian Side of Istanbul

4. The decision, bearing the Basis number 2000/5472 and the Decision number 2000/6335, of the 11th Civil Chamber of the Court of Cassation

5. The decision, bearing the Basis number 2019/2942 and the Decision number 2021/1647, of the 11th Civil Chamber of the Court of Cassation

6. The decision, bearing the Basis number 2015/7411 and the Decision number 2016/3647, of the 11th Civil Chamber of the Court of Cassation

AS A MATTER OF FACT, SINCE JOINT STOCK COMPANIES ARE MANAGED WITH A PLURALISTIC APPROACH, PROTECTION OF MINORITY RIGHTS HOLDERS BECOMES EVEN MORE IMPORTANT.

SEATTLE BASED GROUP STARBUCKS IS SUED BY CONSUMER GROUP ABOUT “ETHICAL” SOURCING

A U.S. consumer advocacy group has filed a lawsuit against Starbucks, alleging that the coffee chain falsely promotes its tea and coffee as "ethically" sourced, while sourcing them from farms in Kenya, Brazil, and Guatemala plagued by human rights abuses.

The National Consumers League claims that Starbucks acquires coffee beans and tea leaves from cooperatives and farms involved in documented severe human rights and labor violations, including child and forced labor, as well as extensive sexual harassment and assault. Starbucks defends itself against these allegations, asserting its commitment to addressing such concerns by actively engaging with farms to ensure compliance with its standards.

The lawsuit by the National Consumers League, a Washington, D.C.-based consumer group established in 1899, claims that Starbucks made false statements, such as being "committed to 100% ethical coffee sourcing" and "100% ethically sourced tea."

The group cites investigations by journalists and governments worldwide revealing abuses at Starbucks suppliers. For instance, BBC reporters exposed sexual violence against women at a tea plantation in Kenya, and Brazilian authorities made a complaint against Starbucks' main Brazilian coffee supplier for conditions similar to slavery.

According to the lawsuit, in 2020, the UK's Dispatches television program brought to light extensive child labor at Guatemalan coffee farms. Starbucks ended purchases from the plantation operator and farms in Kenya which were implicated in child labor in 2020.

However, the lawsuit argues that Starbucks continued using suppliers even after uncovering abuses and certified them as ethical based on purported internal standards.

The National Consumers League accuses Starbucks for violating the District of Columbia's consumer protection law and waiting for the court to order to stop what it claims is false advertising by Starbucks, along with unspecified money damages.

Source: ***https://www.reuters.com/legal/consumer-group-sues-starbucks-over-ethical-sourcing-claims-2024-01-10/***

Sülün Sok. No:8 34330 1.Levent Beşiktaş / TURKEY
Phone : +90 212 356 3210 (pbx) / +90 212 325 2307 (pbx)
Fax : +90 212 356 3213
E-mail : info@ozgunlaw.com
Webpage: www.ozgunlaw.com

Follow us!