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

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Obstruction of On-Site Inspection, Personal Devices and Liability: A Review of the Competition Board's Decision Nr. 24-23/533-224

Under enforcement of competition law, the power to conduct on-site inspections is regarded as one of the most effective tools available to the authority for monitoring market conduct and uncovering infringements. Set out under Article 15 of Law Nr. 4054 on the Protection of Competition, this power plays a critical role particularly in detecting covert violations such as cartels and the abuse of a dominant position. However, the advancement of technology and the digitalization of business practices have not only expanded the scope of on-site inspection powers but have also given rise to new legal debates regarding the limits of these powers. ***(Page 2)***

The Limit of the Right to Dividends in Incorporated Companies: Non-Annulment By the Court of A Resolution not to Distribute Dividends

The most important and fundamental objective of incorporated companies is to generate profit at the end of their operating periods and to distribute such profit obtained. This objective has a nature that cannot be waived or eliminated. However, this does not mean that every profit earned must necessarily be distributed. The right to dividends granted to shareholders is subject to certain limitations. Such limitations arise from the necessity to preserve the company's economic stability and to ensure the continuation of its development. Dividends are defined as the specific and determinable portion of the profit, must be paid by the company to each shareholder. ***(Page 4)***

Dissolution and Liquidation of Limited Liability Companies

The termination of the legal existence of limited liability companies under the Turkish Commercial Code Nr. 6102 ("TCC") consists of a two-stage structure: dissolution and liquidation. Upon the completion of the liquidation process, the legal personality of the company ceases with the deregistration of the trade name from the trade registry. Dissolution refers to the elimination of the legal basis that enables the company to continue its commercial activities as a result of the occurrence of one of the grounds set forth under Article 636 of the TCC. As a consequence of dissolution, the company enters into liquidation. ***(Page 7)***

Stock Amnesty in Companies

Stock amnesty in companies is not strictly a legal or technical term, but rather a tax measure that provides an opportunity to adjust and bring discrepancies between actual (physical) inventories and those recorded in accounting books into the records without exposure to any penalties or severe sanctions. It is generally included within "restructuring/tax amnesty laws" enacted by the state. Inventories to be recorded in the company's books must be shown in the inventory list at their fair market value as of the date of notification. Fair market value is the normal purchase and sale price of the asset as of the valuation date. ***(Page 11)***

An Analysis of Work in Excess of Agreed Hours in Part-Time Employment and Actions for Determination of Period of Service

Part-time employment is recognized where an employee's weekly working hours are determined to be substantially shorter than full-time working hours. In practice, numerous problems arise where a part-time employee performs work in excess of the agreed working hours. This article examines the principles of part-time employment, work in excess of agreed hours in part-time employment, and actions for determination of period of service in relation to part-time employment. ***(Page 14)***

Recent News

OBSTRUCTION OF ON-SITE INSPECTION, PERSONAL DEVICES AND LIABILITY: A REVIEW OF THE COMPETITION BOARD'S DECISION NR. 24-23/533-224

1. Introduction

Under enforcement of competition law, the power to conduct on-site inspections is regarded as one of the most effective tools available to the authority for monitoring market conduct and uncovering infringements. Set out under Article 15 of Law Nr. 4054 on the Protection of Competition, this power plays a critical role particularly in detecting covert violations such as cartels and the abuse of a dominant position.

However, the advancement of technology and the digitalization of business practices have not only expanded the scope of on-site inspection powers but have also given rise to new legal debates regarding the limits of these powers. In this context, the inclusion of mobile devices, platforms containing personal data, and individual communication tools within the scope of inspections creates certain conflicts of interest in terms of constitutional rights, the protection of personal data, and the limits of administrative sanctions. In particular, it would not be inaccurate to state that, under current conditions, the interpretation of the concept of "obstruction of on-site inspection" and the attribution of liability arising from such conduct are being shaped through practice.

The Competition Board's decision dated 21.05.2024 and numbered 24-23/533-224 constitutes a concrete example of these debates. The decision concerns a process in which an administrative fine—initially imposed on a legal entity due to a natural person's refusal to submit their mobile device for inspection during an on-site inspection—was annulled by a judicial ruling and subsequently redirected directly to the individual concerned. In this respect, the decision serves as an important precedent both in terms of the limits of on-site inspection powers and the identification of the subject of liability. Indeed, although it is explicitly regulated within the framework of competition law that sanctions may also be imposed on natural persons, this is not a situation frequently encountered in practice.

2. Summary of the Case and the Legal Framework of the Dispute

In this present case, an on-site inspection was conducted at the District Representation Office of Alanya of the Union of Chambers of Turkish Engineers and Architects, Chamber of Electrical Engineers, within the scope of a preliminary investigation carried out by the Competition Board. During the inspection, the mobile device of an individual who was a member of the representation office was requested to be examined; however, the individual refused to submit the device for inspection.

Consequently, the Competition Board assessed this conduct as the obstruction or hindrance of the on-site inspection and imposed an administrative fine on the relevant chamber. However, this decision was annulled by the 12th Administrative Court of Ankara. The Court determined that the device subject to the inspection was the individual's personal phone, that it had no direct connection with the representation office, and that the representation office had no obligation to ensure that its members submit their personal devices for inspection. On these grounds, it concluded that directing the administrative sanction to the legal entity was unlawful.

Following the judicial ruling, the Competition Board conducted a new assessment in line with the Court's reasoning and, this time, imposed the administrative fine directly on the natural person who had refused to submit their mobile device for inspection. Thus, while the addressee of the sanction was changed with respect to the same act, the legal characterization of the conduct was preserved.

3. Scope of the On-Site Inspection Authority and the Issue of Personal Devices

The power to conduct on-site inspections is an administrative authority that is interpreted broadly under enforcement of competition law. Within the scope of this power, the Authority may examine undertakings' books, documents, and electronic data, and may take copies thereof. However, the limits of this power become contentious, particularly when personal devices are concerned. In this present case, the Court's approach makes a significant contribution to this debate.

The Court held that, unless a direct link can be established between a personal mobile device and the corporate activities, the failure to submit such a device for inspection cannot be attributed to the legal entity. This approach is significant in delineating the boundaries of the on-site inspection power. Indeed, in today's business environment, there is an increasing intertwinement between employees' or members' personal phones and professional activities.

However, this does not mean that every personal device automatically falls within the scope of inspection. For an inspection to be considered lawful, there must, at a minimum, be a reasonable connection between the device in question and the undertaking's activities.

Where such a connection has not been established, a refusal to comply with the request may still be characterized as "obstruction"; however, the question of who bears liability for such conduct must be assessed separately. In this present case as well, this distinction proved to be decisive.

One of the most significant contributions of the decision concerns the identification of the addressee of administrative sanctions.

Under the Competition Board's initial decision, directing the administrative fine to the undertaking is an approach frequently encountered under the general logic of enforcement of competition law.

However, the Court found this approach unlawful and emphasized that liability must rest with the person who actually committed the act.

Accordingly, for an administrative sanction to be imposed in respect of a conduct, the act must have been carried out by the relevant person, and there must be a direct link between that person and the conduct in question.

In this present case, since no such link could be established between the individual who refused to submit their mobile device for inspection and the representation office, it was not considered possible to hold the legal entity liable.

By contrast, the liability of the person who directly engaged in the conduct was accepted.

This approach has a limiting effect on the tendency to directly attribute employees' or members' individual actions to the legal entity.

4. Broad Interpretation of the Concept of Undertaking and Individual Liability

Another notable aspect of the Court's judgment is the classification of the relevant individual as an "undertaking" within the meaning of competition law.

This finding once again demonstrates the broad interpretation of the concept of an undertaking in competition law.

For the purposes of competition law, an undertaking may encompass not only companies but also natural persons engaged in economic activity.

Accordingly, in this present case, it was considered legally possible to impose an administrative fine directly on the individual who refused to submit their mobile device for inspection.

This approach carries significant implications.

First, individuals must now recognize that they may be subject to competition law sanctions not only through legal entities but also directly on the basis of their own conduct.

This creates an important sphere of responsibility, particularly for self-employed professionals, consultants, and independent practitioners.

5. Interpretation of the Concept of Obstruction of On-Site Inspections

In this present case, another noteworthy point is the characterization of the failure to submit the mobile device for inspection as a direct obstruction of the on-site inspection.

At this juncture, there was no divergence of views between the Board and the Court. The dispute rather focused on the allocation of liability than on the legal nature of the act itself.

This situation demonstrates that the Competition Authority interprets its on-site inspection powers quite broadly.

The Authority adopts a strict approach by directly linking non-compliance with inspection requests to sanctions. However, this strictness is balanced by the requirement that liability be attributed to the correct subject.

The emphasis on individual liability arising from the decision will require undertakings to reassess their internal compliance mechanisms.

It becomes increasingly important to establish clearer and more binding rules regarding how employees and members should behave during on-site inspection processes.

6. Conclusion

The Competition Board's decision dated 21.05.2024 represents an important approach in terms of striking a balance between the authority to conduct on-site inspections and individual rights.

The decision, on the one hand, preserves the effectiveness of on-site inspections, while on the other, clearly establishes that administrative sanctions must be directed at the correct subject.

In this respect, the decision goes beyond a purely technical assessment under enforcement of competition law and reflects the application of fundamental legal principles to a concrete case.

In particular, in today's rapidly digitalizing environment, it can be said that this decision will play a guiding role in clarifying the legal boundaries of inspections conducted through personal devices and data.

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1. Competition Board's Decision Nr. 24-23/533-224

2. Competition Board's Decision Nr. 22-48/698-296

3. Decision, bearing the Basis number 2023/1049 and the Decision number 2024/460, of the 12th Administrative Court of Ankara

THE LIMIT OF THE RIGHT TO DIVIDENDS IN INCORPORATED COMPANIES: NON-ANNULMENT BY THE COURT OF A RESOLUTION NOT TO DISTRIBUTE DIVIDENDS

Introduction

The most important and fundamental objective of incorporated companies is to generate profit at the end of their operating periods and to distribute such profit obtained. This objective has a nature that cannot be waived or eliminated. However, this does not mean that every profit earned must necessarily be distributed. The right to dividends granted to shareholders is subject to certain limitations. Such limitations arise from the necessity to preserve the company's economic stability and to ensure the continuation of its development.

Dividends are defined as the specific and determinable portion of the profit, the distribution of which has been resolved by the general assembly, that must be paid by the company to each shareholder [1].

Article 507 of the Turkish Commercial Code ("TCC") defines the right as follows: *"Each shareholder is entitled to participate in the net period profit resolved to be distributed to shareholders in proportion to their shares, in accordance with the law and the provisions of the articles of association."* Dividends may be granted not only to shareholders but also to certain persons specified by law. Furthermore, provided that there is a provision in the articles of association, profit shares may also be allocated to usufruct right holders, holders of usufruct certificates, founders, and members of the board of directors.

Resolution on the Distribution of Dividends

The authority to decide on the distribution of dividends belongs to the general assembly. This authority is set out under the TCC [2]. However, in order for a resolution on dividend distribution to be adopted, a proposal must first be prepared by the board of directors.

Subsequently, this proposal must be submitted to the general assembly (TCC Art. 437/I). The dividend distribution proposal prepared by the board of directors must be made available for the examination of shareholders at the company's headquarters and branches at least fifteen days prior to the general assembly meeting, in an appropriate manner (TCC Art. 437/I).

The resolution on dividend distribution must be adopted by the general assembly by taking into consideration the proposal together with the financial documents, accounts, and financial statements. The authority to decide on dividend distribution is listed among the non-transferable powers of the general assembly under the Law.

While adopting a resolution on dividend distribution, the general assembly must take into consideration the provisions of the law and the articles of association. Otherwise, such circumstance would require the annulment of the general assembly resolution.

The provisions of the articles of association setting out dividend distribution must comply with the mandatory provisions of the law and the nature of the dividend right [3]. If the articles of association do not contain any provision regarding dividend distribution, the resolution on dividend distribution must be adopted freely, provided that it is in compliance with the law.

Annulment of the Resolution on Dividend Distribution

The annulment of general assembly resolutions is set out under Article 445 of the TCC. Pursuant to this provision, if a resolution adopted by the general assembly is contrary to the law, the articles of association, or the principle of good faith, an action for annulment may be filed before the commercial court of first instance, seated at the company's headquarters, in three months.

The general assembly resolutions subject to litigation shall remain valid until a judgment is rendered. An annulment action may be brought in three months as of the date on which the resolution was adopted, and this period is a peremptory time limit.

Company shareholders have the right to request the annulment of the general assembly's decision either to distribute or not to distribute dividends [4].

However, in cases where the general assembly has not adopted any resolution regarding the distribution of dividends, it is not possible to file an annulment action, since there is no resolution that can be subject to annulment.

The subject matter of an annulment action is a legally existing resolution of the general assembly. Indeed, under one of its decisions, the Court of Cassation explicitly stated that it is not possible to request the annulment of a non-existent general assembly resolution.

Annulment of the General Assembly Resolution

The general assembly is the highest decision-making and governing body of an incorporated company. For this reason, resolutions adopted by the general assembly are binding on all shareholders. Where the conditions for annulability are met, such resolutions may be annulled, thereby preventing them from producing legal effects and consequences. This matter is set out under Article 445 of the TCC.

Through this provision, limitations are imposed on shareholders holding majority voting power and on those who could otherwise pass resolutions at will. In this context, an annulment action may be brought against general assembly resolutions.

In order for such an action to be filed, the resolution must be contrary to the law, the articles of association, or the principles of good faith.

The Law also sets out the persons entitled to bring this action and the time limits within which it must be filed. The persons listed under the Law may file an annulment action in three months before the commercial court of first instance seated at the place where the company's headquarters is situated.

The persons entitled to bring such an action are set out under Article 446 of the TCC. Accordingly; the following persons may bring an annulment action:

- Shareholders who were present at the meeting and voted against the resolution and had their dissenting vote duly recorded in the minutes;

- Shareholders, whether they attended the meeting or not, regardless of whether they voted against or in favor, who allege that: the meeting was not duly convened, the agenda was not properly announced, persons or their representatives who were not entitled to attend the general assembly participated and voted, they were unlawfully prevented from attending or voting, and that the aforementioned irregularities affected the adoption of the resolution;

- The board of directors;

- Each member of the board of directors, if the implementation of the resolutions would result in their personal liability.

The legal nature of the annulment decision is that of a destructive formative right. Since the annulment of general assembly resolutions is a right that seeks the retroactive elimination of a resolution from the date it was adopted, it constitutes a destructive formative right.

The exercise of this right is possible only through litigation, pursuant to Article 445 of the TCC [5]. In light of all the foregoing, an action for annulment brought against general assembly resolutions is a destructive formative action in legal nature, and the judgment rendered as a result of such action is a formative decision. [6]

The Effect of the Court Judgment in an Annulment Action

A court judgment annulling a general assembly resolution produces legal effect only upon becoming final. Until the judgment becomes final, the general assembly resolution continues to produce its legal effects.

Provided that an annulment action has been filed, it is also possible to request the suspension of the execution of the general assembly resolution.

The court may decide to stay the execution after hearing the members of the board of directors and the auditors.

At the same time, if the court considers that it is in the interest of the company, it may also order the suspension of execution without hearing the members of the board of directors and the auditors. There are also decisions of the Court of Cassation adopting this view.

Conclusion

In an annulment action brought against a general assembly resolution not to distribute dividends, the court may decide not to annul the resolution.

In order for annulment to be granted, the resolution must have been adopted in violation of the articles of association or the law, as explained above.

Likewise, if the general assembly has not adopted any resolution regarding the distribution of dividends, an annulment action cannot be filed in such a case either.

The general assembly is not always obliged to adopt a resolution on dividend distribution. A resolution not to distribute dividends may also be adopted due to the need to preserve the company's economic stability and ensure the continuation of its development.

As long as this situation does not become continuous, it will not be annulled by the court. The non-distribution of dividends must not become a permanent practice. These resolutions adopted by the general assembly must comply with the principle of good faith set out under Article 2 of the TCC.

In several decisions, the Court of Cassation has also emphasized that this right must not be abused.

Accordingly, it is understood that when assessing the validity of resolutions concerning dividend distribution, not only the company's economic justifications but also whether the resolution was adopted in good faith must be examined.

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2. Ateşağaoğlu, 2012, p.79.
3. Birsel, 1998, p.137
4. Erem, p.180.
5. Önen, p. 14; Kuru ve Budak, p. 209
6. Anonim Ortaklıklarda Genel Kurul (General Assembly in Incorporated Companies), Istanbul, 2004, p. 249; Bahtiyar, Partnerships, p. 206; Çamoğlu (Poroy/Tekinalp) p. 543; Önen, p. 116.

BILL ON MATERNITY LEAVE AND ONLINE CONTENT REGULATIONS ADOPTED BY THE GRAND NATIONAL ASSEMBLY OF TÜRKİYE!

The Bill on Amendments to the Social Services Law and Certain Other Laws has been adopted and enacted by the General Assembly of the Grand National Assembly of Türkiye. The new amendments to maternity leave provisions introduced by the law are as follows:

- Under the current regulation, maternity leave for female employees is 16 weeks in total, consisting of 8 weeks before birth and 8 weeks after birth. Following the said amendment, this period has been extended to 24 weeks in total, comprising 8 weeks before birth and 16 weeks after birth. While the pre-birth leave period remains unchanged, the post-birth leave period has been increased by 8 weeks.

-Regarding work during the pre-birth period, under the previous regulation, employees could work up until the last 3 weeks before childbirth upon certification of medical fitness by a doctor's report. Under the new regulation, this period has been reduced to 2 weeks. With this change, the portion of leave that can be transferred to the postnatal period has been increased.

- For those who had given birth on the date the law entered into force, whose current maternity leave had already ended but who had not yet completed the 24-week period from the date of birth, an additional maternity leave of up to 8 weeks will be granted upon request.

- For private sector employees, paternity leave granted in the event of a spouse's childbirth, which was previously 5 days, has been increased to 10 days under the new regulation, aligning it with the entitlement of civil servants.

- For civil servants, a provision has been introduced granting 10 days of leave upon request following the placement of a child with foster families.

In the explanatory memorandum of the bill, the purpose of extending maternity leave is stated as protecting the mother and child during the postnatal period, supporting the mother's physical recovery process, ensuring the healthy continuation of breastfeeding, and strengthening the early-stage care of the child.

Within the same law, amendments have also been introduced to Law Nr. 5651 on the Regulation of Publications Made on the Internet and Combating Crimes Committed Through Such Publications, as follows:

- The definitions section of Law Nr. 5651 has been amended by adding the terms "game," "game provider," and "game distributor," thereby bringing the digital gaming ecosystem within the scope of regulation.

- Social network providers have been required not to offer services to children under the age of 15 and to implement necessary measures, including age verification, to ensure compliance. In addition, they are obliged to take the necessary steps to provide separate, age-appropriate services for children aged 15 and above.

- Social network providers have been made obliged to offer parental control tools. These tools are required to include mechanisms such as control of account settings, parental approval for paid transactions, and monitoring and/or limiting usage time.

- For social network providers with more than 10 million daily access users from Türkiye, a new rule has been introduced requiring immediate compliance with urgent decisions issued under Article 8/A of Law Nr. 5651, and in any case within a maximum of one hour.

- For social network providers with more than 10 million daily users from Türkiye, an obligation has been introduced to take necessary measures to prevent the re-publication on the platform of content that has previously been subject to removal and/or access blocking decisions.

- The timeframe for providing information and documents requested by the Information and Communication Technologies Authority (BTK) from social network providers has been revised to "immediately and within a period not exceeding 15 days, as determined by the Authority."

- Game providers are required to rate games according to age criteria, while game distributors are obliged to provide parental control tools. It has also been stipulated that games not classified according to age criteria may only be offered provided that they are assigned the highest applicable age rating.

- For foreign-based game distributors with more than 100 thousand daily users from Türkiye, an obligation has been introduced to appoint a local representative in Türkiye and notify the Authority. In the event of non-compliance, a graduated set of sanctions is foreseen, including administrative fines and, subsequently, bandwidth restriction measures.

- In addition, social network providers and certain game distributors are required to conduct a "risk assessment" for services offered to Türkiye and report it to the Authority. It has also been stipulated that the Authority may request corrective measures where necessary, and that non-compliance may result in administrative fines and bandwidth restriction sanctions.

In this context, social network providers have been required to develop age verification and protective mechanisms for services directed at children, and obligations regarding the protection of users under the age of 15 have been strengthened.

In addition, the responsibilities of platforms in content removal and access blocking procedures have been expanded, and the regulatory framework aimed at protecting children from harmful content in the digital environment has been reinforced.

Source: ***https://www.tbmm.gov.tr/Yasama/KanunTeklifi/5f9ced52-3776-46e4-be23-019cb8da2666***

DISSOLUTION AND LIQUIDATION OF LIMITED LIABILITY COMPANIES

1. INTRODUCTION

The termination of the legal existence of limited liability companies under the Turkish Commercial Code Nr. 6102 ("TCC") consists of a two-stage structure: dissolution and liquidation. Upon the completion of the liquidation process, the legal personality of the company ceases with the deregistration of the trade name from the trade registry.

Dissolution refers to the elimination of the legal basis that enables the company to continue its commercial activities as a result of the occurrence of one of the grounds set forth under Article 636 of the TCC. As a consequence of dissolution, the company enters into liquidation.

Liquidation denotes the process commencing with the occurrence of a ground for dissolution and ending with the deregistration of the capital company from the trade registry and the consequent termination of its legal personality. It should be emphasized that the company does not lose its legal personality at the moment of dissolution.

During the liquidation process, the company continues to exist under the designation "in liquidation"; however, its field of activity becomes limited to matters relating to liquidation. The legal existence of the company terminates upon the deregistration from the trade registry, carried out pursuant to the application filed by the liquidators following the completion of the liquidation process. [1]

This article examines the dissolution and liquidation of limited liability companies and, within this context, evaluates their differences from incorporated companies.

2. DISSOLUTION OF LIMITED LIABILITY COMPANIES

In legal doctrine, the dissolution of a company is defined as a change of purpose. Accordingly, upon dissolution, the active purpose of generating and sharing profit through joint effort transforms into the passive purpose of liquidating the company's assets. [2]

Article 636 of the TCC sets forth the grounds for the dissolution of a limited liability company. Accordingly, a limited liability company shall be dissolved in the following circumstances:

(i) the occurrence of a ground for dissolution, as stipulated under the articles of association;
(ii) a resolution of the shareholders' general assembly;
(iii) the opening of bankruptcy proceedings;
(iv) other cases prescribed by law; and
(v) a court decision.

Among these circumstances, the occurrence of a dissolution event stipulated under the articles of association, bankruptcy, and other statutory grounds are characterized as ipso facto dissolution, whereas a resolution of the shareholders' general assembly and a court decision are classified as dissolution.

2.1. Events of Ipso Facto Dissolution

Grounds for ipso facto dissolution arise either from the articles of association or from statutory provisions. In limited liability companies, shareholders may stipulate certain events under the articles of association as grounds for dissolution. Upon the occurrence of a contractual ground for dissolution, the company is automatically dissolved. The most significant statutory ground is the opening of bankruptcy proceedings. Pursuant to Article 165 of the Debt Enforcement and Bankruptcy Law Nr. 2004, bankruptcy is opened upon the issuance of a bankruptcy order. In the event of the opening of bankruptcy, the company is dissolved and enters liquidation. In such cases, the liquidation process is conducted in accordance with the provisions of the Debt Enforcement and Bankruptcy Law.

2.2. Events of Dissolution

(i) Resolution of the Shareholders' General Assembly: Pursuant to Article 616 of the TCC, the resolution to dissolve the company falls within the non-assignable powers of the general assembly of a limited liability company. In addition, under Article 621 of the TCC, a resolution on the dissolution of a limited liability company requires the concurrent presence of at least two-thirds of the votes represented and the absolute majority of the entire share capital carrying voting rights. Where these requirements are satisfied, the general assembly of the limited liability company may adopt a resolution to dissolve the company. Upon such resolution, the company is dissolved.

(ii) Court Order:

- Article 636/2 of the TCC sets out dissolution on the grounds of organ deficiency. It provides as follows: *"Where one of the company's mandatory organs has not existed for a long period of time, or where the general assembly cannot convene, the commercial court of first instance at the company's registered office, upon request of a shareholder or a company creditor, shall hear the managers and grant the company a period to bring its situation into compliance with the law. If the deficiency is not remedied within the prescribed period, the court shall order the dissolution of the company."*

Accordingly, where the company's mandatory corporate organs are absent or unable to convene, a shareholder or a creditor may bring an action for the dissolution of the company.

- Article 636/3 of the TCC sets out dissolution on just cause. It provides as follows: *"In the presence of just cause, any shareholder may request the dissolution of the company from the court. Instead of ordering dissolution, the court may decide to pay the claimant shareholder the real value of their share and expel the shareholder from the company, or it may adopt another appropriate and acceptable solution depending on the circumstances."*

Accordingly, each shareholder may request the dissolution of the company in the presence of just cause. The concept of "just cause" has been explained under the decision, bearing the Basis number 2019/795, the Decision number 2022/374 and dated 24.03.2022, of the General Assembly of Civil Chambers of the Court of Cassation as follows:

"Pursuant to to the aforementioned provision, each shareholder may request the dissolution of the limited liability company in the presence of just cause. The determination of what constitutes "just cause" is left to the discretion of the court in light of the specific circumstances of the case and the nature of the allegations raised. In essence, a situation in which the corporate relationship has been irreparably damaged to such an extent that it can no longer be maintained on the basis of good faith constitutes a just cause for the dissolution of a limited liability company.

In other words, circumstances leading to the loss of trust within the partnership or rendering the continuation of the company unbearable for the shareholders in accordance with the principle of good faith may be regarded as just causes for dissolution. Indeed, no shareholder can be expected, in line with the principle of good faith, to continue a corporate relationship that has become intolerable for them. The concept of just cause is inherently flexible and may encompass different meanings depending on the particularities of each individual case." [3]

2.3. Consequences of the Dissolution of a Limited Liability Company

In the event that the company is dissolved by a court decision, the dissolution is registered with and published by the trade registry upon the court's order. Where the company is dissolved for any other reason, the duty to register and announce the dissolution rests with the managers of the limited liability company. Except for exceptional cases, a dissolved company enters into liquidation. Pursuant to Article 533 of the TCC, by reference to Article 643 of the TCC, it is mandatory for the company's trade name to include the phrase "in liquidation" once it enters liquidation status.

3. LIQUIDATION OF LIMITED LIABILITY COMPANIES (LIQUIDATORS, LIQUIDATION PROCESS, AND TERMINATION OF LIQUIDATION)

Liquidation is the entirety of the processes involving the completion of the company's ongoing affairs, the conversion of its assets into cash, the collection of receivables, the payment of debts, and the distribution of any remaining value to the shareholders. The ultimate purpose of liquidation is to terminate the company's proprietary relations and bring its legal existence to an end through its deregistration from the trade registry. As a result, upon dissolution, the purpose of liquidation replaces the company's corporate objective, and the company's activities are carried out solely for the purpose of liquidation. [4]

In the liquidation of a limited liability company, Article 643 of the TCC refers to the provisions governing the liquidation of incorporated companies.

Accordingly, the provisions applicable to incorporated companies regarding the liquidation procedure and the powers of corporate organs during liquidation are also applied to limited liability companies.

3.1 Liquidators

As a rule, liquidation is carried out by the liquidators. A liquidator is the person who performs the representation and management functions of the company during the liquidation period. In the external relations of a company in liquidation, representation is exercised through the liquidators, and the powers of the corporate organs are limited to the purposes of liquidation. Pursuant to Article 535 of the TCC, "Upon the company entering into liquidation, the duties and powers of the organs are restricted to those transactions that are necessary for the conduct of the liquidation and, by their nature, cannot be performed by the liquidators."

There are two main methods for the appointment of liquidators:

(i) Appointment of liquidators by general assembly resolution: A liquidator may be appointed by the articles of association or by a resolution of the shareholders' general assembly of the limited liability company. Where no liquidator is appointed by the articles of association or the general assembly, liquidation is carried out by the manager or the board of managers of the limited liability company pursuant to Article 536 of the TCC.

(ii) Appointment of liquidators by court decision: Where the dissolution of the company is effected by a court decision, it is expressly set out under Article 536/3 of the TCC that the liquidator shall be appointed by the court.

The duties of the liquidator are to conduct the liquidation process while preserving the company's assets. In this context, the liquidator is required to take over the company's books and records, prepare an inventory and balance sheet, collect the company's receivables, pay its debts, sell company assets where necessary, and follow up the deregistration process upon completion of the liquidation.

Under the decision, bearing the Basis number 2022/83, the Decision number 2023/2102 and dated 28.03.2023, of the 12th Civil Chamber of the Court of Cassation, the duties of the liquidator and the liquidation process are summarized as follows:

"In summary, the liquidation process under the provisions of the aforementioned law may be described as follows: the liquidators shall identify all assets and liabilities of the dissolved company, and after obtaining approval for the relevant balance sheet, collect the company's receivables, convert the existing assets into cash by selling them, and subsequently pay the company's debts to its creditors.

If any surplus remains, it shall be distributed to the shareholders in proportion to their shareholding structure, as set out under the articles of association. Thereafter, together with the relevant balance sheet, the liquidators shall apply to the trade registry office by submitting a petition in order to complete the deregistration process, thereby effecting the company's deregistration from the registry.

During liquidation, since all assets of the company are converted into cash, the company's debts are settled therefrom, and any remaining amount is distributed to the shareholders, as reflected in the balance sheet, and no remaining assets exist, there would consequently be no obligation to submit a declaration of assets." [5]

3.2. Liquidation Activities

The liquidation process constitutes a period of activity that is "limited to liquidation purposes" commencing as of the moment the company is dissolved. The liquidation activities are set out under Articles 540 et seq. of the TCC:

(i) Initial inventory and balance sheet: Upon assuming office, the liquidators shall promptly prepare an inventory and a balance sheet reflecting the company's assets and financial position at the commencement of liquidation, and such documents are submitted to the shareholders' general assembly for approval (Article 540 of the TCC).

(ii) Call and protection of creditors: Persons who are identified as creditors based on the company's books and records are notified that the company has been dissolved through three announcements made at one-week intervals. These announcements are published in the Trade Registry Gazette, on the company's website, and via any publication method, as stipulated under the articles of association. Creditors are thereby invited to notify their claims to the liquidators (Article 541 of the TCC).

(iii) Collection of receivables and conversion of assets into cash: The liquidator shall take the necessary actions for the collection of the company's receivables and shall convert the assets included in the company's estate into cash in accordance with the purpose of liquidation.

(iv) Payment of debts and taking necessary measures: Liquidation is primarily based on the protection of creditors. For this reason, as a rule, distribution to shareholders is not possible before the company's debts have been paid. Where it is established that the company's assets are sufficient to cover its liabilities, undisputed and due claims, as well as the claims of creditors who apply following the announcement period and prove their receivables, shall be paid. Debts that are not yet due shall be immediately settled by way of discounting, pursuant to Article 542/1-h of the TCC, based on the interest rate applied by the Central Bank of the Republic of Türkiye for short-term loans. In addition, the amounts corresponding to the claims of creditors known to the company but who fail to notify their claims shall be deposited with a bank designated by the Ministry of Trade. With respect to debts that are not yet due or are disputed, security shall be provided by depositing an amount sufficient to cover such liabilities with a notary, thereby ensuring the necessary protection. [1]

(v) Distribution of the remaining assets to shareholders: After the debts of the company in liquidation have been paid and the share capital contributions have been returned, any remaining assets of the company in liquidation shall, unless otherwise provided under the articles of association, be distributed among the shareholders in proportion to their paid-in capital contributions and preferential rights. However, no distribution may be made before the expiry of the three-month period prescribed by law, commencing as of the third announcement inviting creditors (Article 543 of the TCC).

3.3. Termination of Liquidation

The completion of liquidation does not, in itself, automatically terminate the legal personality of the company. For the legal personality to be extinguished, the company must be deregistered from the trade registry. According to the approach of the Court of Cassation, the completion of liquidation and the registration of deregistration are distinct processes, and the termination of the company's legal personality is contingent upon the registration of its deregistration.

Decision, bearing the Basis number 2024/344, the Decision number 2025/504 and dated 10.09.2025, of the General Assembly of Civil Chambers of the Court of Cassation reads as follows;

"29. Pursuant to Article 533 of the Turkish Commercial Code, a dissolved incorporated company enters into liquidation. A company in liquidation retains its legal personality until the completion of the liquidation process, including its relations with shareholders, and continues to operate under its trade name with the phrase "in liquidation" added. Liquidation refers to the process of converting the company's assets into cash, collecting receivables, paying debts, and, if any surplus remains, distributing it to the shareholders as a rule. Liquidation is deemed completed upon the final settlement of these operations. Since the completion of liquidation operations is necessary, the legal personality and legal capacity of the dissolved company continue to exist during the liquidation process.

However, although the completion of liquidation is a necessary condition for the extinction of the legal personality of an incorporated or limited liability company established upon registration with the trade registry, it is not sufficient in itself.

In other words, pursuant to Article 545/1 of the TCC, for the termination of the legal personality of an incorporated company, after the completion of liquidation, the liquidators must apply for the deregistration of the company's trade name from the trade registry in order to eliminate its formal existence, and this request must be accepted and the deregistration must be registered.

With the deregistration of the company's trade name from the trade registry, the legal personality of the incorporated or limited liability company comes to an end, and the company loses its legal existence and legal capacity. *(Ünal Tekinalp, Sermaye Ortaklıklarının Yeni Hukuku (The New Law of Capital Companies), 4th ed., Istanbul, 2015, p. 192).*

30. ***As can be seen, the dissolution of an incorporated company or a limited liability company and the termination of its legal personality—namely the complete extinction of its legal existence—are entirely distinct concepts. A company that has been dissolved and entered into liquidation, and whose liquidation procedures have been fully completed, cannot be regarded as having lost its legal personality unless it is also deregistered from the trade registry. In other words, in order to conclude that an incorporated company has ceased to exist as a legal entity, both the full completion of the liquidation process and the deregistration of the company from the trade registry must occur cumulatively, as required for legal certainty and security.*** *(Asuman Yılmaz, Türk Ticaret Kanunu'na Göre Anonim ve Limited Şirketlerde Ek Tasfiye (Supplementary Liquidation in Incorporated and Limited Liability Companies under the Turkish Commercial Code), Banking and Commercial Law Journal, 2016, Vol. XXXII, Issue. 2, p. 154)"* [6]

For this reason, one of the duties of the liquidators is, upon completion of the liquidation process, to apply to the trade registry and ensure the registration of the deregistration of the company's trade name. The legal personality of the company is terminated as a result of the full completion of the liquidation proceedings and the company's deregistration from the trade registry.

4. DIFFERENCES BETWEEN LIMITED LIABILITY COMPANIES AND INCORPORATED COMPANIES IN THE CONTEXT OF DISSOLUTION AND LIQUIDATION

The dissolution and liquidation regimes of limited liability companies and incorporated companies exhibit a significant degree of similarity within the systematic framework of the Turkish Commercial Code. The primary reason for this is that the provisions governing the consequences of dissolution and the liquidation procedure for limited liability companies explicitly refer to the rules applicable to incorporated companies (Articles 636/5 and 643 of the TCC). Despite this similarity, certain differences arise due to the distinct nature of the two types of companies.

4.1. Differences in Actions for Dissolution on Just Cause

In a limited liability company, any shareholder may bring an action for dissolution on just cause (Article 636/3 of the TCC). In contrast, in incorporated companies, the right to file an action for dissolution on just cause is granted only to shareholders meeting the statutory shareholding thresholds (Article 531 of the TCC). This distinction is consistent with the more "person-oriented" structure of limited liability companies and the fact that the corporate relationship is based on closer and more personal ties among shareholders.

4.2. Differences in Terms of Corporate Organs

In limited liability companies, the personal relationship among shareholders may have a more direct influence on corporate management and decision-making mechanisms. For this reason, "deadlock" situations—such as the inability of the shareholders' general assembly to convene, disputes regarding the appointment of managers, or the de facto paralysis of management and representation—are more frequently regarded as grounds for dissolution in limited liability companies.

4.3. Similarity in the Liquidation Regime

In the liquidation of a limited liability company, Article 643 of the TCC refers to the liquidation provisions applicable to incorporated companies. For this reason, there is no fundamental difference between the two types of companies in terms of the technical aspects of the liquidation process, such as the appointment of liquidators, the preparation of the inventory and balance sheet, the calling of creditors, the payment of debts, and the distribution of the liquidation surplus. Accordingly, the differences primarily arise at the pre-liquidation stage, namely in relation to the grounds for dissolution and the processes leading to dissolution.

5. CONCLUSION

The dissolution and liquidation of a limited liability company are structured under the Turkish Commercial Code as a two-stage system following one another. Upon dissolution, the company's profit-oriented business purpose ceases to exist, and this is replaced by the purpose of liquidating its assets.

With dissolution, the company enters into liquidation; however, it does not lose its legal personality at this stage. During liquidation, the company continues to exist under the designation "in liquidation," and the powers of its organs are restricted to the purposes of liquidation.

The complete extinction of legal personality occurs only upon the registration of the company's deregistration from the trade registry following the completion of liquidation. The Court of Cassation also considers the registration of deregistration as a mandatory condition for the termination of legal personality.

During the liquidation process, the liquidators prepare the initial inventory and balance sheet of the company, call upon creditors, collect receivables, convert the company's assets into cash, pay its debts, and, if any surplus remains, distribute it to the shareholders.

Upon completion of this process, an application is made to the trade registry for the deregistration of the company's trade name, thereby bringing the company's legal personality to an end.

Finally, although there is a general similarity between limited liability companies and incorporated companies in terms of the liquidation regime, significant differences arise particularly with respect to the grounds for dissolution and termination. Indeed, the fact that any shareholder in a limited liability company may file an action for dissolution on just cause indicates that personal elements of the corporate relationship are more decisive in this type of company.

By contrast, the requirement in incorporated companies that the right to bring a dissolution action be subject to certain shareholding thresholds is closely linked to their capital-oriented structure.

In addition, the more limited organ structure in limited liability companies and the closer relationships among shareholders may, in practice, more frequently give rise to managerial deadlocks and consequent dissolution claims.

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STOCK AMNESTY IN COMPANIES

INTRODUCTION

Stock amnesty in companies is not strictly a legal or technical term, but rather a tax measure that provides an opportunity to adjust and bring discrepancies between actual (physical) inventories and those recorded in accounting books into the records without exposure to any penalties or severe sanctions. It is generally included within "restructuring/tax amnesty laws" enacted by the state.

In businesses, the following issues may arise over time:

- Goods that appear in the records but do not actually exist,

- Goods that exist in reality but are not recorded in the books,

- Incorrectly valued inventories.

Stock amnesty provides an opportunity to formally correct these inconsistencies by bringing them into compliance with official records.

SCOPE OF STOCK AMNESTY

The stock amnesty scheme generally covers two main situations:

Inventories Recorded in the Books but Not Physically Available

Goods that appear in the accounting records of businesses but do not actually exist fall within this scope. In such cases, taxpayers remove the relevant goods from their records and pay tax at specified rates.

Inventories Physically Existing but Not Recorded in the Books

Goods that exist in the business but have not been recorded in the accounts are included in the records at fair market value. In this process, a certain amount of VAT is also payable.

Taxpayers who wish to benefit from the stock amnesty must apply to the tax administration within the periods, specified under the related applicable regulations. The implementation process generally consists of the following steps:

-Comparison of physical inventory with accounting records

- Identification of discrepancies

- Submission of a tax return

- Payment of the calculated tax

- Adjustment of accounting records

As a result of this process, the company's inventory records are brought into alignment with the actual physical situation.

Inventories to be recorded in the company's books must be shown in the inventory list at their fair market value as of the date of notification.

Fair market value is the normal purchase and sale price of the asset as of the valuation date. This value may also be determined by the company's management. No separate valuation report is required for this purpose.

ACCOUNTING PROCESS

When stock amnesty is declared, VAT is paid to the relevant tax office based on the value of the declared goods. In accounting records, this transaction is generally reflected as follows: ,

-On the assets side: The declared inventory amount is recorded under the Inventories account.

- On the liabilities side: A corresponding account is opened for these inventories, such as 525 Goods Recorded Under Amnesty (or a similar special fund account). [1]

This account is a special fund account included within the company's equity. Its purpose is to reflect the position of these assets—initially unrecorded but later formalized—within shareholders' equity.

CAN IT BE DISTRIBUTED TO SHAREHOLDERS?

This issue represents one of the most critical legal distinctions in stock amnesty practice.

According to one view, the stock amnesty regime—also referred to as the goods inventory declaration—provides a significant advantage to the shareholders of companies that make such a declaration.

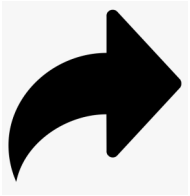
Under this view, the amounts recorded in the special fund account as a result of the declaration are not considered dividend distributions when transferred to shareholders; therefore, they are not subject to any taxation, including withholding tax.

Accordingly, individual shareholders are not required to file an annual income tax return for the amounts transferred to them in this way, and if they are already filing an annual return due to other sources of income, they do not include these amounts in their declarations and they are not taxed.

The same conclusion applies where the shareholders are legal entities. In such cases, the amounts transferred by companies that have made a goods inventory declaration to their corporate shareholders are not included in the recipient company's taxable corporate income and are not subject to corporate tax. [2]

From the perspective of the Tax Procedure Law, the situation is as follows: The Tax-Related Regulations approach the issue purely from the standpoint of the "Tax Receivable."

The state essentially states: "This asset already belonged to you; you have now recorded it. If you transfer it to your shareholder, I do not treat it as income or profit, and therefore I do not consider it as tax evasion, nor do I require withholding tax."



However, the Tax Procedure Law is concerned only with the tax liability owed to the state. It does not determine whether funds may be distributed out of the company; that authority lies with the Turkish Commercial Code (TCC). From the perspective of the TCC, however, the situation is as follows;

Article 462 of the TCC (Capital Increase from Internal Resources): This provision sets out that funds recorded in the balance sheet and permitted by the related applicable regulations may be added to the company's capital. Since the stock amnesty fund is treated as an internal source within the company, it may be incorporated into the share capital.

Articles 507 and 509 of the Turkish Commercial Code (Dividend Distribution): These provisions set out that only net profit for the period and freely distributable reserves may be distributed as dividends. The funds arising from stock amnesty do not constitute "operating profit"; rather, they are an "adjustment entry." Therefore, they do not technically qualify as "distributable profit".

DISTRIBUTION RESTRICTION

The amounts monitored in this account may not be withdrawn from the business or distributed to shareholders. If an attempt is made to distribute these amounts to shareholders as if they were dividends, the liabilities outlined below may arise.

1. Corporate Tax: The distributed amount is treated as income for the relevant period and becomes subject to corporate tax.

2. Withholding: A tax withholding obligation arises in connection with dividend distribution (withholding tax).

Restriction under the TCC: The Issue of "Distributable Profit"

Even if the Tax Procedure Law sets out that "no tax will be levied," the Turkish Commercial Code (TCC) comes into play. For a payment to be distributed to shareholders as a "dividend," it must, under Articles 507 and 509 of the TCC, originate from:

1. The profit for the period, or
2. Freely distributable reserves.

This raises the question of whether the stock amnesty fund constitutes profit. In short, it can be stated that stock amnesty cannot be regarded as profit.

This fund is, in essence, a "correction or offsetting" account opened on the liabilities side of the balance sheet, corresponding to the increase in assets (inventory) on the assets side.

Possibility of Being Considered a Capital Reduction

If this fund is distributed to shareholders, both the Ministry of Finance and the TCC framework may characterize it as a "Capital Reduction."

-In terms of Tax Procedure Law: Even if the provision states that it is "not subject to taxation," the withdrawal of this fund in cash from the company reduces the company's equity.

-Articles 473-475 of the TCC (Capital Reduction): If there is an outflow from the company that is capital in nature, creditor notification requirements must be observed, and capital reduction procedures must be followed. If funds are withdrawn from the company under the name of "profit distribution" without following these procedures, it would constitute an irregular practice.

Addition to Capital

A possible course of action for this fund is its incorporation into share capital. When this amount is added to capital, no income tax arises for shareholders, as there is no outflow of assets from the company, and no withholding tax obligation is triggered for the company.

If a capital reduction is carried out after such an increase, it may be presumed—primarily for tax purposes—that the amounts originating from this fund are the first to be distributed, which could lead to taxation assessments.

It can be stated that there is no strict statutory time limit prescribed for the capitalization of this fund; however, the fund should not be withdrawn from the company or transferred to another account in a manner inconsistent with its nature.

Adding the stock amnesty fund to share capital is generally considered the most appropriate approach both for strengthening the equity structure and for incorporating the amount into registered capital without triggering taxation at the point of capitalization. However, once converted into share capital, any subsequent cash distribution may become subject to taxation.

CONCLUSION

In summary, setting aside the option of adding the fund to share capital, it can be concluded that the resources arising from stock amnesty cannot be directly distributed to shareholders. The main reasons for this can be briefly summarized as follows:

- In terms of the Tax Procedure Law: Withdrawal of this fund from the company is considered as the transfer of a "tax-exempt gain to shareholders." The legislator grants the tax advantage only on the condition that this fund remains within the company's structure, particularly within its share capital.

- In terms of the TCC: Every amount distributed must originate from commercial profit. The stock amnesty fund, however, does not constitute commercial profit; it is a "notional (fictitious) balancing item" used to equalize the assets and liabilities sides of the balance sheet.

Its distribution would, in technical terms, amount to a return of capital, which is contrary to the principle of creditor protection.

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NEW SPECIALIZED COURTS DESIGNATED BY THE COUNCIL OF JUDGES AND PROSECUTORS!

According to the decision published in the Official Journal on 22 April 2026, the Council of Judges and Prosecutors has decided to establish new specialized courts. The decision will apply to new cases and proceedings filed as of 1 June 2026. The regulation aims to ensure that judicial services are delivered in a more effective, efficient, and specialized manner.

Specialization will not only deepen technical expertise but also contribute to the standardization of judicial processes, enhance the predictability of decisions, and strengthen the consistency of case law.

The Council of Judges and Prosecutors has decided that, taking into account the current workload and pending case inventory, **Administrative Courts numbered 2, 3, 4, and 16 in Ankara** will have jurisdiction over cases arising from;

- Law Nr. 3194 on Zoning, including zoning plans, subdivision procedures, building permit processes, occupancy permits and other authorizations, demolition and/or sealing orders, building registration certificate applications, zoning administrative fines, and other penalties and sanctions imposed under the said Law, as well as other administrative acts carried out pursuant to Law Nr. 3194,

- Law Nr. 6306 on Transformation of Areas Under Disaster Risk, and urban transformation practices,

- Law Nr. 3621 on the Coast Law and other applicable coastal regulations,

- Law Nr. 2863 on Conservation of Cultural and Natural Assets, Law Nr. 5366 on Renewal and Conservation through Use of Deteriorated Historical and Cultural Immovable Assets, and other applicable regulations concerning antiquities and historic works,

- Law Nr. 4708 on Building Inspection and other applicable building inspection regulations.

In practice, although there is a connection between these cases, due to the absence of procedural requirements or the inability to issue consolidation decisions, disputes concerning the same subject matter may be heard simultaneously by different courts. This situation may hinder the achievement of uniformity in practice and may lead to differing assessments and inconsistencies in case law. In this context, it has been deemed appropriate to introduce specialization within the Administrative Courts in Ankara through workload allocation in cases and proceedings arising from Law Nr. 3194 on Zoning and certain transactions concerning immovable property.

The Council of Judges and Prosecutors has decided that, taking into account the current workload and pending case inventory, cases and proceedings falling within the scope of Article 20/C of the Administrative Procedure Law Nr. 2577, titled “Disputes arising from administrative acts and actions concerning military service,” shall be heard by designated administrative courts. Accordingly, such cases will be assigned to **Administrative Courts Nr. 1 in Adana, Antalya, Bursa, Diyarbakır, Erzurum, Gaziantep, İzmir, Kayseri, Konya, and Samsun; Administrative Courts Nr. 1, 20, 22, and 26 in Ankara; and Administrative Courts Nr. 15 and 17 in Istanbul.**

A significant portion of disputes related to military service concerns technical and specialized matters arising from discipline, status, duty, personnel rights, and service requirements. The adjudication of such disputes within the general court structure may lead to prolonged proceedings as well as inconsistencies in practice.

For this reason, it is considered that adjudicating such cases and proceedings in specialized courts will contribute to conducting trials in a faster, more accurate, and more effective manner, as well as prevent divergent decisions on the same subject matter between regional administrative courts and the administrative courts within the same jurisdiction, thereby ensuring consistency in case law. It has therefore been concluded that concentrating these cases in designated courts and ensuring specialization in this area is necessary and appropriate.

The Council of Judges and Prosecutors has issued the following decisions:

- cases and proceedings arising from board decisions issued within the scope of the regulatory and supervisory powers of the Capital Markets Board, the Competition Authority, and the Public Oversight, Accounting and Auditing Standards Authority; and, pursuant to subparagraph 1/(a) of Article 20/A of the Administrative Procedure Law Nr. 2577, procurement-related cases and proceedings excluding debarment decisions, as well as, within the same scope, cases and proceedings arising from board decisions of the Public Procurement Authority under the Public Procurement Law Nr. 4734 and the Public Procurement Contracts Law Nr. 4735, shall be heard, taking into account the current workload and pending case inventory, by **Administrative Courts Nr. 10, 13, and 25 in Ankara**, and

- cases and proceedings arising from board decisions issued within the scope of the regulatory and supervisory powers of the Radio and Television Supreme Council, the Information and Communication Technologies Authority, the Energy Market Regulatory Authority, the Nuclear Regulatory Authority, and the Personal Data Protection Authority shall be heard, taking into account the current workload and pending case inventory, by **Administrative Courts Nr. 12, 14, and 15 in Ankara**.

In this context, considering that a significant portion of disputes arising from board decisions issued within the regulatory and supervisory powers of the aforementioned regulatory and supervisory authorities are heard before the Administrative Courts of Ankara pursuant to Article 32 of the Administrative Procedure Law Nr. 2577, it has been deemed appropriate to introduce specialization primarily within the Administrative Courts in Ankara through workload distribution.

Source: ***https://www.resmigazete.gov.tr/eskiler/2026/04/20260422-5.pdf***

AN ANALYSIS OF WORK IN EXCESS OF AGREED HOURS IN PART-TIME EMPLOYMENT AND ACTIONS FOR DETERMINATION OF PERIOD OF SERVICE

Part-time employment is recognized where an employee's weekly working hours are determined to be substantially shorter than full-time working hours. In practice, numerous problems arise where a part-time employee performs work in excess of the agreed working hours. This article examines the principles of part-time employment, work in excess of agreed hours in part-time employment, and actions for determination of period of service in relation to part-time employment.

Principles of Part-Time Employment

Part-time employment is set out under Article 13 of the Labor Law. Accordingly;

"Where an employee's normal weekly working hours are determined to be substantially shorter than those of a comparable employee employed under a full-time employment contract, the contract shall be deemed a part-time employment contract.

An employee employed under a part-time employment contract may not, solely on the grounds that the employment contract is part-time, be subjected to differential treatment in comparison with a comparable full-time employee, unless justified by objective reasons.

The wages and divisible monetary benefits of a part-time employee shall be paid proportionately to the duration of work performed in comparison with a comparable full-time employee.

A comparable employee is an employee employed full-time in the same or a similar position at the workplace.

In the absence of such an employee at the workplace, a full-time employee performing the same or similar work in a comparable workplace within the same line of business shall be taken as the basis for comparison.

Where there is a suitable vacant position at the workplace, requests by employees for transfer from part-time to full-time employment or from full-time to part-time employment shall be taken into consideration by the employer, and vacant positions shall be announced in due time."

Weekly working hours may be determined up to a maximum of 45 hours. In part-time employment, however, such working hours must be determined as less than 45 hours per week. According to the case law of the Court of Cassation, working arrangements of 30 hours per week or less are regarded as part-time employment.

"Under Article 13 of Labor Law Nr. 4857, an employment contract in which the employee's normal weekly working hours are determined to be substantially shorter than those of a comparable full-time employee is defined as a "part-time employment contract". Working hours are set out under Article 63 of the said Law as a maximum of 45 hours per week.

Since the aforementioned Article 13 refers to a comparable employee, the normal weekly working hours to be taken as the basis in determining whether an employment contract is part-time shall be assessed in comparison with a comparable employee employed under a full-time employment contract.

The weekly working time prescribed under Article 63 of the Law constitutes the maximum limit.

Accordingly, the average weekly working hours of a comparable employee in the relevant line of business should be determined, provided that such hours do not exceed 45 hours per week, and it should then be assessed whether the agreed working time has been reduced to a significant extent.

Pursuant to Article 6 of the Regulation on Working Hours related to the Labor Law, "work performed up to two-thirds of the comparable full-time work carried out at the workplace shall constitute part-time employment."

Although the wording "less than two-thirds" was used in the justification, the Regulation provides that work performed up to two-thirds of comparable full-time work shall be regarded as part-time employment.

Accordingly, where the normal working time, determined as 45 hours per week in comparison with a comparable employee, is agreed by the parties as 30 hours or less, the existence of a part-time employment contract may be recognized.

The wages and divisible monetary benefits of an employee working under a part-time employment contract shall be paid proportionately to the duration of work performed in comparison with a comparable full-time employee." [1]

In part-time employment, the employee may not be subjected to different treatment compared to a comparable full-time employee. Unless there is an objective reason justifying differential treatment, no change may be made to the terms and conditions of employment solely on the ground that the employee works part-time. Indeed, the case law of the Court of Cassation has also addressed the principles relating to this obligation of equal treatment:

"It is stipulated under the Law that an employee working under a part-time employment contract may not, in the absence of an objective justification, be subjected to differential treatment solely on this ground. It is possible for the employee to claim rights—such as wages and other monetary entitlements—that are to be determined on a pro rata basis according to the working time and remuneration of a comparable full-time employee.

Furthermore, Article 5 of Labor Law Nr. 4857 expressly subjects such discrimination to sanctions; accordingly, it is also possible to claim compensation for breach of the duty of equal treatment.

Where the consequences of discrimination do not relate to pecuniary or quantifiable benefits, only compensation for breach of the duty of equal treatment may be awarded.

Although part-time employment is set out under the Law, issues such as how seniority is to be determined, how employees are to benefit from severance and notice entitlements, and the method of calculation of such rights are not explicitly set out at the statutory level.

These matters have been clarified through judicial decisions. Accordingly, whether part-time work is performed on certain days of the week or in the form of a few hours each day, the Court of Cassation has held that severance pay entitlement and vacation rights may arise after the employee completes one year as of the date of commencement of work at the workplace (Decision, bearing the Basis number 2007/31462, the Decision number 2008/108 and dated 12.02.2008,of the 9th Civil Chamber of the Court of Cassation).

The wage to be taken as the basis for calculation must be the remuneration received by the employee for part-time work. In addition, in relation to employees working under a part-time employment contract, the notice period must be determined based on the total duration of the employment relationship between the date of commencement and the date on which termination is intended." [2]

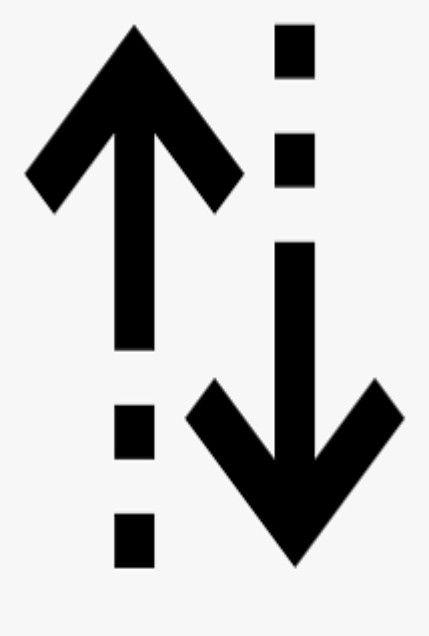
Work in Excess of Agreed Hours in Part-Time Employment

Under the Labor Law, the weekly working time is set at 45 hours, and work exceeding 45 hours per week is regarded as overtime. In part-time employment, where the weekly working time is determined to be less than 45 hours, work exceeding the agreed working time but not exceeding 45 hours is defined as work in excess of agreed hours.

"The claimant, in this present case, asserted that following the first lawsuit, he continued to be employed under the same working arrangement from 08.08.2008 until the termination of the employment contract, and therefore claimed outstanding wage differences and bonus entitlements.

The court accepted that, due to the claimant being required to work more than 30 hours per week after 08.08.2008, he was deemed to have been employed on a full-time basis.

Considering the constituent effect of the first judgment, and assuming the acceptance of full-time employment, there should be no difference in terms of the amount of wage entitlement arising from the claimant's employment between 30 and 45 hours per week.



However, the reversal of the first judgment awarding wage differences on the grounds that "the claimant failed to prove with concrete evidence that he worked at least 45 hours every week, and since wages are paid in consideration of work performed, the acceptance of full-time employment does not necessarily mean that the claimant worked at least 45 hours every week" is based on a material error.

Compliance with this reversal does not constitute a procedural vested right in favor of the defendant.

On the contrary, it is clear that the first judgment, which created a constituent effect, constitutes a procedural vested right in favor of the claimant.

For an employee who is required to be employed on a part-time basis, being made to work in excess of 30 hours per week entails the legal consequence of being deemed to have been employed on a full-time basis.

Accordingly, it must be accepted that the employee is entitled to the weekly wage corresponding to 45 hours, regardless of whether 45 hours were actually worked. It is not appropriate for the court to dismiss the claim for wage differences by complying with our reversal decision, which is based on a material error. For this reason, the decision must be reversed." [3]

According to the case law of the Court of Cassation, where part-time employees are required to work in excess of the agreed working hours and such practice becomes continuous, there is a risk that the employee may be deemed to be employed on a full-time basis.

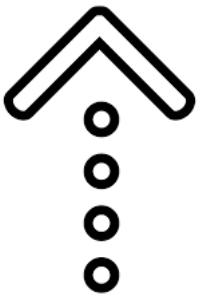
As a rule, the burden of proof that the employee was consistently required to work beyond the agreed part-time working hours rests with the employee.

Actions for determination of period of service in part-time employment

Where an employee working under a part-time employment contract is regularly required to work in excess of the agreed hours, and as a result social security contributions are not fully paid, an action for determination of period of service may be brought for the purpose of establishing the actual duration of employment.

Although the burden of proof regarding work performed beyond the agreed part-time hours is generally considered to rest with the employee, the case law of the Court of Cassation indicates that, due to the public order nature of the actions for determination of period of service, the principle of ex officio examination prevails to a greater extent.

Therefore, the burden of proof is not assigned exclusively to one party in a strict manner.



"Paragraph 1 of the Provisional Article 7 of the Social Insurance and General Health Insurance Law provides that: "Until the effective date of this Law, insurance commencement dates and service periods under Law Nr. 506 dated 17/07/1964, Law Nr. 1479 dated 02/09/1971, Law Nr. 2925 dated 17/10/1983, Law Nr. 2926 dated 17/10/1983 repealed by this Law, Law Nr. 5434 dated 08/06/1949, and under the funds subject to Article 20 of Law Nr. 506 dated 17/07/1964, as well as periods of actual service increment, deemed service periods, borrowed and reinstated periods, and insurance periods, shall be assessed in accordance with the provisions of the respective laws to which they are subject."

In this respect, in disputes concerning the determination of service periods prior to 01.10.2008, the provisions of the repealed Law Nr. 506 shall apply; whereas for the period after this date, the provisions of Law Nr. 5510 shall apply.

Paragraph 10 of Article 79 of the repealed Law Nr. 506 provides that:

"If the documents set out under the Regulation are not submitted by the employer, or if the insured person cannot be identified by the Institution, insured persons may prove their employment by applying to the court within 5 years starting from the end of the year in which their services were rendered, and if they are able to establish their service through a court judgment, the total monthly earnings and the number of premium payment days stated in the court decision shall be taken into account."

Paragraph 9 of Article 86 of Law Nr. 5510 contains a provision in the same direction.

On the other hand, individuals who are employed shall be deemed insured ex lege upon the fulfilment of the conditions, as set forth under the Law.

However, such persons must not fall within the statutory exceptions provided therein.

The acquisition of insured status without the need for any further procedural act follows from Articles 4 and 92 of Law Nr. 5510. However, the existence of actual work is a prerequisite for the establishment of insured status. Unless the existence of genuine and factual employment is established, it is not possible to speak of insured status.

At this stage, it is necessary to examine the evidence and factual circumstances through which the existence of actual work is to be established.

Considering that social security law has characteristics falling within both public law and private law, it is observed that the principle of ex officio examination prevails particularly in actions for determination of service periods.

Indeed, actions for determination of service periods fall outside the scope of the adversarial principle and are subject to the principle of ex officio investigation; therefore, in such cases, the burden of proof cannot be attributed exclusively to one party.

Since the existence of work activity may be proven by any kind of evidence, in such cases it is necessary to make use of the employment records required to be kept at the workplace as well as documents and evidence held by the Institution, and to obtain payroll records. It should also be investigated whether any labor inspector reports exist.

Where possible, individuals who may have knowledge of the workplace during the relevant period—such as managers and employees of the workplace, as well as persons working in neighboring or nearby workplaces—should be identified through law enforcement authorities and heard as witnesses.

In addition, statements should be taken regarding the position in which the insured person worked, the duration of work, the nature of the work, and whether the work was continuous, intermittent, or seasonal, as well as the start and end dates of employment and the wages received.

While evaluating witness testimony, particular attention should be paid to its credibility, including how the witnesses acquired such information, their relationship with the employer, employee, or workplace, and the reliability of long-term recollections.

It should also be considered how such extensive information could be accurately retained in human memory over many years, and the statements should be corroborated by other supporting evidence." [4]

Conclusion

In conclusion, part-time employment relationships require the establishment of a delicate balance between contractual freedom and the principle of employee protection in labor law practice. In particular, where the limits of part-time work are exceeded in practice and such a situation becomes continuous, a reassessment of the legal nature of the employment relationship becomes inevitable.

Action for determination of period of service has a legal nature that differs from classical employment-related claims. This is because such an action concerns not only the individual interests of the parties, but also directly affects public order and the sustainability of the social security system.

For this reason, the procedural and evidentiary regime applicable to actions for determination of service periods differs significantly from that applicable to employment-related claims. In wage and other labor receivable disputes, the adversarial principle generally applies, and the burden of proof rests, as a rule, on the party asserting the claim.

By contrast, in actions for determination of service periods, the judge is obliged to act within the framework of the principle of ex officio examination to uncover the material truth. In this context, relying solely on the employee's allegations and the evidence submitted by them may lead to results contrary to the very purpose of such proceedings.

Indeed, in actions for determination of service periods, the existence of actual work may be proven by any kind of evidence; workplace records, payroll documents, institutional records, labor inspector reports, and witness statements must be assessed together in a holistic manner.

Otherwise, an assessment based solely on the parties' statements may lead both to unjust acquisition of insured status and to the disregard of genuine employment relationships.

In this context, in disputes arising from part-time employment relationships, the function of the action for determination of service periods must be properly understood; it should be borne in mind that this action is not a "claim for receivables," but rather a sui generis type of proceeding aimed at the accurate determination of insurance periods and premium payment days. Accordingly, judicial authorities are obliged to conduct a comprehensive inquiry capable of revealing the objective truth, without being confined solely to the employee's allegations.

Ultimately, actions for determination of service periods play an important role in preventing the abuse of part-time employment and ensuring that employees are included in the social security system in accordance with their actual working time.

The proper fulfilment of this function is only possible through the effective application of the principle of ex officio examination and a holistic evaluation of the evidence.

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References:

1. Decision, bearing the Basis number 2015/24276, the Decision number 2018/3224 and dated 19.02.2018, of the 9th Civil Chamber of the Court of Cassation

2. Decision, bearing the Basis number 2015/24276, the Decision number 2018/3224 and dated 19.02.2018, of the 9th Civil Chamber of the Court of Cassation

3. Decision, bearing the Basis number 2016/6944, the Decision number 2016/8814 and dated 11.4.2016, of the 9th Civil Chamber of the Court of Cassation

4. Decision, bearing the Basis number 2022/10-1241, the Decision number 2024/9 and dated 24.01.2024, of the General Assembly of Civil Chambers of the Republic of Türkiye

ACTION FOR DETERMINATION OF PERIOD OF SERVICE HAS A LEGAL NATURE THAT DIFFERS FROM CLASSICAL EMPLOYMENT-RELATED CLAIMS. THIS IS BECAUSE SUCH AN ACTION CONCERNS NOT ONLY THE INDIVIDUAL INTERESTS OF THE PARTIES, BUT ALSO DIRECTLY AFFECTS PUBLIC ORDER AND THE SUSTAINABILITY OF THE SOCIAL SECURITY SYSTEM.

SCOPE OF SCT-EXEMPT VEHICLE REGULATION TO BE EXPANDED!

Following the communiqué published in the Official Journal, a change has been introduced to the Special Consumption Tax (SCT) regime for persons with disabilities. The regulation promulgated by the Revenue Administration under the Ministry of Treasury and Finance expands the scope of the SCT exemption, particularly regarding vehicle purchases by individuals with orthopedic disabilities. With the above-mentioned amendment, the headings in the previous regulation have been renumbered, while a new subsection has been added under the provision concerning "vehicle purchases for individuals with a disability rate below 90%." Accordingly, individuals with an orthopedic disability rate of 40% or more who are unable to obtain a driver's license due to their disability will be exempt from Special Consumption Tax (SCT) on vehicle purchases, subject to certain conditions. The communiqué entered into force upon its promulgation in the Official Journal as of 22.04.2026.

Which vehicles are covered?

The regulation covers vehicles with a minimum domestic content rate of 40%, provided that they fall within specified eligibility limits. Accordingly, the exemption will apply to:
- Passenger cars and similar vehicles classified under HS Code 87.03 (with a total price including taxes below TRY 2,873,900)
- Light commercial vehicles under HS Code 87.04
- Motorcycles under HS Code 87.11

SCT to be Shown on Invoice but not Collected

Under exempt sales, SCT will be calculated but will not be included in the invoice total. Instead, the calculated tax amount will be shown separately on the invoice. In addition, an SCT return will still be filed for these transactions; however, no tax assessment will be made.

Application requirements

Certain documentation requirements have also been introduced for individuals wishing to benefit from the exemption:
- A medical board report indicating at least 40% orthopedic disability
- An assessment confirming that a driver's license cannot be obtained (or a separate medical report if this is not stated in the disability report)
- Sales invoice. These documents must be submitted to the tax office on the day following the filing of the tax return.

Source: ***https://www.resmigazete.gov.tr/eskiler/2026/04/20260422-3.htm***

OMNIBUS LAW NR. 7577 PUBLISHED IN THE OFFICIAL JOURNAL!

Law Nr. 7577 on Amendments to Certain Laws was published in the Official Journal dated 17 April 2026 and entered into force. The law introduces significant amendments in areas such as the tax treatment of gambling and betting advertising expenses, the Value Added Tax Law, the social security contribution base and meal allowance exemption, SCT exemptions for persons with disabilities, the paid military service fee, and debt reduction for earthquake housing. The main provisions introduced by the omnibus law are summarized as follows:
- With the amendment introduced to the Income Tax Law and the Corporate Tax Law, advertising and promotion expenses related to all types of games of chance and betting have been included among non-deductible expenses. Accordingly, a regulation has been introduced that increases the tax burden for companies operating in the betting and gaming sector, as well as for advertising and media organizations providing services to such companies.
- Amendments introduced to the Higher Education Law and the Value Added Tax Law have restricted certain tax advantages previously granted to foundation universities. In addition, the Value Added Tax Law has introduced a new provision exempting property transfers carried out under the Expropriation Law from VAT. Accordingly, transfers of immovable property to public administrations carrying out expropriation will not be subject to VAT.
- With the amendment to the Social Insurance and General Health Insurance Law, the payments excluded from the contribution base have been redefined. In-kind benefits, various allowances, and employer contributions to private health insurance and individual pension schemes not exceeding 30% of the monthly minimum wage, as well as meal expenses up to a specified limit, have been excluded from the social security contribution base. The daily meal allowance exemption has been set at 300 Turkish lira, and this amount is foreseen to be increased annually in line with the revaluation rate.
- Regarding the SCT exemption for vehicle purchases by persons with disabilities, subparagraph (c) of paragraph (2) of Article 7/1 of the SCT Law—previously annulled by the Constitutional Court—has been re-regulated. Under the amendment, individuals with an orthopedic disability rate of 40% or more who are unable to obtain a driver's license are included within the scope of the exemption without the requirement that they personally drive the vehicle. In addition, the upper price limit for vehicles, including SCT, has been set at 2,873,972 Turkish lira for 2026.
- In the Military Service Law, the indicator value used as the basis for the paid military service fee has been increased from 240,000 to 300,000. Accordingly, the paid military service fee for 2026 has been set at 417,000 Turkish lira. It has also been set out that a portion of the collected amounts will be recorded as revenue to the general budget, while the remaining portion will be transferred to the Defense Industry Support Fund.
- With the provisional article added to Law Nr. 7452, it is stipulated that, for projects implemented in areas designated as disaster zones due to the earthquakes of 6 February 2023, discounts will be applied to the debt amounts of housing and workplaces produced. In the event of a lump-sum payment made by 31 December 2026, reductions of up to 74% for one residential unit and up to 48% for one commercial unit are foreseen.

The law provides for a staggered entry-into-force regime. The amendments to the Higher Education Law and the amendment to Article 17/2-a of the Value Added Tax Law will enter into force on 1 January 2027. The new provision regarding the VAT exemption for immovable property transfers within the scope of expropriation will enter into force on the first day of the second month following the publication date of the law. All other provisions will enter into force on the date of publication.
Source: ***https://www.resmigazete.gov.tr/eskiler/2026/04/20260417-21.htm***

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