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OUTBREAK of COVID-19 and FORCE MAJEURE

On March 11th, the World Health Organization identified the novel coronavirus as a pandemic and today, the outbreak of COVID-19 is affecting 196 countries. When we examine the statistics around the world, there are more than 533,416 active cases and 24,082 deaths and the coronavirus death toll in Turkey reached 75 deaths as of 27.03.2020.

COVID-19 has been preventing international and national trade. In terms of time, form, price or quantity, the businesses involved in foreign trading have come to a point that contractors cannot execute the contracts they have previously concluded.

In Turkey, COVID-19 has caused serious disruption to the economy and has had a remarkable impact on workforce. Pursuant to commercial relations and all the measures taken in the country, the question that arises here is what is the effect of the outbreak in legal relations and can it be considered as a force majeure?

Force majeure is an event or effect that cannot be reasonably anticipated or controlled. In Turkey, there is no specific provision that defines the force majeure. However, article 13 of the Tax Procedural Law (Law No. 213) states that certain disasters such fire, earthquake, flood are regarded as force majeure within its context. Besides, in doctrine force majeure is defined as “an extraordinary event that occurs outside of the activity of the debtor, that leads to the violation of debt in an absolute and inevitable manner which cannot be foreseen and resisted.”(Eren, F., Borçlar Hukuku Genel Hükümler, Ankara 2017, p. 582).

The field of application of the force majeure is framed by decisions of the Court of Cassation as well as doctrinal disputes.



Taking into consideration the Court of Cassation's decision (General Assembly, 27.06.2018, E. 2017/90 K. 2018/1259) concerning force majeure, it should be examined whether there is a force majeure on the basis of each case.

Accordingly, in order to evaluate the specific case as a force majeure the event must be irresistible and unpredictable that is outside the activity, operation and the control of the parties and this must result in damage which is violating the contractual debt.

In addition to these criteria, the Court of Cassation while examining the force majeure, also assesses whether the event impacts the country as a whole or not and its impacts on similar legal relations. Whether the parties are merchants or not is an issue that should be taken into consideration depending on each case as well (Court of Cassation, 11th Circuit, 23.10.2014, E. 2014/8068, K. 2014/16238).

Article 136 of the Turkish Code of Obligations regarding the provisions on the subsequent impossibility shall extend in the case of force majeure. Under the regulation, the debt ends if the performance of obligation becomes impossible due to a reason the party is not responsible and this is not regarded as violation of contract.

Consequently, given the unprecedented nature of the COVID-19 outbreak and the actions of governments around the world in response, the outbreak of COVID-19 would constitute a force majeure event in Turkish law since COVID-19 is large in diameter and grows faster and its global as well as national impact is not negligible.



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