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PROTECTING SOCIOECONOMIC INTERESTS OF THE WEAKER PARTY IN THE FREE MARKET: THE EXPLOITATION OF RELIGIOUS BELIEFS IN THE TURKISH CONTRACT LAW

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ABSTRACT

Despite being the ultimate rule in the free market, the freedom of contract is fading away against the aim to protect the weaker party in contract law. The weaker party's socioeconomic interest can be breached in a specific way that would be summarized as the exploitation of religious beliefs. This type of exploitation is usually seen across Turkish society, but there is almost no jurisprudence concerning this subject. The paper evaluates potential legal solutions from the Turkish Code of Obligations (TCO). Theoretical views are compared to achieve an adequate way of compensation against the stronger party for the weaker party whose pecuniary damages occurred because of the contract that the latter signed with religious thoughts and inexplicable generosity for the former. Common law's undue influence and civil law's sandpile theory can suggest founded solutions against religious exploitation in the contract. Still, TCO art. 27 can give a suitable cause for the illegality: the contrariety to economic public order. This notion can prevent copied future contracts against the same group of weaker parties when the pioneer illegal contract is invalidated, and the exploiter must compensate the pecuniary damages of the counterparty.

Key words: *exploitation, weaker party, public order, vulnerability, sandpile theory, undue influence, freedom of contract*

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1. INTRODUCTION

The notion of public order is commonly evaluated as the concept of public law. However, the contract between individuals or legal persons could be against the public order under national law. The national law sometimes regulates a general prohibition of the contract contrary to public order in the code of obligations. It can be risky in the sense of legal certainty but is a notable solution for the unique type of exploitation in the contract.

The concept of public order is usually considered the economic public order that originated from the French law of obligations.[1] This concept demands the protection of the national economic order with the macro and micro approach to the functioning of the free market. At some point, cultural aspects and the written rules of law may beg the question of whether we could reconsider the economic public order to protect the weaker party in the contract against the unique type of exploitation. This paper will question the public order in the Swiss and Turkish codes of obligations and its role against religious exploitation in the contract that is usually defined in the common law but often occurs as the different types of contracts in Turkish law related to specific characteristics of the society. Also, the paper aims to define possible solutions against the exploitation of religious beliefs in the contract by Law No. 6098 of the Turkish Code of Obligations (TCO).

2. TO BE OR NOT TO BE: THE CONCEPT OF PUBLIC ORDER IN THE LAW OF OBLIGATIONS

In the Turkish Code of Obligations (TCO) art. 27, the public order is one of the reasons for limiting the freedom of contract. This provision is acquired from Swiss CO art. 19/ 2, which established the strict rules of law. In the same provision, morality and personal rights are also the limits of freedom of contract. The concept of public order dissociates from the other limits because of its uniqueness and unusual character in the law of obligations. There are different approaches to the limits of the freedom of contract in TCO art. 27. One of the opinions in Turkish doctrine asserts that morality, public order, or personal

[1] Vincent-Legoux, M. C.: "L'ordre public et le contrat Étude de droit comparé interne" C. 58 L'ordre public, Archives de Philosophie du Droit, Dalloz Edition, 2015, p. 220; Sefton-Green R.: A vision of social justice in French private law: paternalism and solidarity, In: Hans- W. Micklitz (Eds.) *The Many Concepts of Social Justice in European Private Law*, Cheltenham: Edward Elgar Publishing Limited, 2011, pp. 240, Cumyn, M.: Les sanctions des lois d'ordre public touchant à la justice contractuelle: leurs finalités, leur efficacité, *Revue Juridique Thémis*, 41(1) 2007, p. 17.

rights are not separate concepts that limit the freedom of contract but should be used as complementary legal rules in deciding whether any other provision of the TCO is mandatory.[2] The opposite opinion suggests that these concepts should be evaluated as independent limits of the freedom of contract instead of an indicator of mandatory rules.[3] The latter is more convenient with the wording of TCO art. 27.[4]

When we look at the concept of public order's past in the comparative law of obligations, we can witness non-identical approaches even in the Germanic law systems. In German law, during the negotiations of drafting BGB, the public order was discussed as a potential limit of the freedom of contract. The existence of public order was denied in BGB art. 138 by the reason of its ambiguity.[5] Accordingly, the absence of public order in Swiss CO would be expected under the influence of the Germanic law system. However, Swiss lawmakers have chosen the path of the French Civil Code (art. 6, 1162) and established it as a separate limit of the freedom of contract. Following Swiss case law and doctrine, the essential principles of private law are also part of the rules of public order.[6]

Since the public order is variable through time and according to the place, there is a separation between the perspectives about whether the rule of public order is written. The written rules of public order are a must in accordance

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2 Kaşak, F. E.: *Sözleşme* Özgürlüğünün *Sınırı Olarak Kanunun Emredici Hükümlerine Aykırılık*, Istanbul: OnIki Levha Yayınları, 2019, pp. 108-109; Hatemi, H.: "BK. 19-20 ve TBK. 27'nin Karşılaştırılması", Prof. Dr. Cevdet Yavuz'a Armağan 6098 Sayılı Türk Borçlar Kanunu Hükümlerinin Değerlendirilmesi Sempozyumu MÜHF-HAD Özel Hukuk Sempozyumu Özel Sayısı, 2011, pp. 99-100; Eren, F.: Borçlar Hukuku Genel Hükümler, Yetkin Yayınevi, *Baski Ankara*, 2022, p. 320; Oğuzman, M. K., Öz, T.: *Borçlar Hukuku Genel Hükümler*, Istanbul: Vedat Kitapçılık, Istanbul, 2022, pp. 83-84.

3 Guillod, O., Steffen, G., 'Art. 19-20', In: Thévenoz, L., Werro, F. (Eds.) Commantaire Romand Code des Obligations, Helbing & Lichtenhan Verlag, 2012, p. 195; Tercier, P. Quels Fondements pour le Contrat au XXIe Siecle?, In: Bellanger, F., Chaix, F., Chappius, C., Lachat, A. H. (Eds.), *Le Contrat dans Tous ses États*, Staempfli Editions, 2004, p. 164; Zuffrey-Werro, J. B.: Le Contrat Contaire aux Bonnes Moeurs, Éditions Universitaires Fribourg Suisse, Fribourg, 1988, p. 65.

4 Kocayusufpaşaoğlu, N.: *Borçlar Hukuku Genel Bölüm, Borçlar Hukukuna Giriş, Hukuki* İşlem*, Sözleşme*, Istanbul: Filiz Kitabevi, 2017, p. 530.

5 Zuffrey-Werro (n 3) p. 121, Hatemi, H.: *Hukuka ve Ahlaka Aykırılık Kavramı ve Sonuçları (*Özellikle *BK 65 kuralı)*, Istanbul: Sulhi Garan Matbaası, 1976, p. 64. For the opposite opinion concerning the public order in German law, also see Simitis, G.: Guten Sitten und Ordre Public, Ein kritischer Beitrag zur Anwendung des 138 Abs. I BGB, Marburg, 1960, p. 168.

6 Simonius, A.: Rapport de Suisse. T. d. 1952, *La Notion de l'Ordre Public et des Bonnes Moeurs dans le Droit Privé*, Eugéne Doucet Limitée, 1956, pp. 800-801, Zuffrey-Werro (n 3), pp. 61-62.

with the prevailing opinion in Swiss and Turkish law. Public order should be considered only as written rules because of its political characteristics and being enormously ambiguous for the reason of letting the judge establish the content of the rule of public order.[7] On the other hand, the opposite opinion in Turkish law suggests that there would be a non-written rule of public order to satisfy society's new socio-economic needs. Besides the written rules of law, the imperativeness of the rule of public order can be determined by concrete cases.[8] It is also the prevailing opinion in French law, which was the starting point of jurisprudence in the 1920s.[9]

3. THE PROTECTION OF THE WEAKER PARTY IN THE CONTRACT

The public order is a framework concept and becomes concrete with the protection of the weaker party. Most of the rules of public order aim to protect the weaker party against the enormous socio-economic power of the counterparty. No one shall become dependent on the counterparty in the contract. This principle can also fulfill the public order's balance mechanism between the freedom of contract and the state's intervention in the contract via the strict law rules. It also reflects the social side of contract law in both Swiss and Turkish law.[10]

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[7] Van Gysel, A. C., Romain, J. F., Conclusions Générales: L'ordre Public entre Hétérogénéité et Homogénéité in J. F. Romain, M. Grégoire et al. (eds.) L'ordre Public Concept et Applications, Les Conférences du Centre de droit privé et de droit éeconomique, Bruylant 1995, p. 312; Fauvaque-Cosson B.: *L'ordre public, Le code civil: un passé, un présent, un avenir*, Paris: Éditions Dalloz, 2004, p. 477.

[8] Meinertzhagen-Limpens, A.: Quelques Aspects de l'Ordre Public en Droit Comparé., In : Romain, J. F., et al. (Eds.), *L'ordre Public Concept et Applications*, *Les Conférences du Centre de droit privé et droit économique,* Bruylant, 1995, p. 231; Kocayusufpaşaoğlu (n 4) p. 546.

[9] Further information for the pioneer case in French law, also see Croizé v. Veaux Cassation Civile, 4 Décembre 1929, Recueil Sirey 31.I.49, note by Esmein, P. et al.: Les Grands Arrêts de la Jurisprudence Civile, Vol. I, 11th ed, Éditions Dalloz, Paris, 2000, N. 8, Hage-Chaine, F.: Rapport Général, In: *L'ordre Public Journées Libanaises*, Travaux de l'Association Henri Capitant des Amis de la Culture Juridique Française, XLIX(LGDJ) 1998, p. 28, de la Moradiere, J.: Fransız Hususi Hukukunda Amne Nizamı Gayri Ahlakilik, Kemal Tahir Gürsoy (trans.) *Adalet Dergisi*, 41(1) 1950, p. 742.

[10] Giger H.: *Une Protection Sociale Renforcée- ligne directrice du législateur pour le nouveau droit du crédit à la consommation*, Éditions Staempfli & Cie SA, 1979, p. 21-22; Tercier, P.: Quels Fondements pour le Contrat au XXIe Siecle?, In: Bellanger, F., Chaix, F., Chappius, C., Lachat, A. H. (Eds.), *Le Contrat dans Tous ses États*, Staempfli Editions, 2004, p. 214; Atasoy, K.: *S*özlesme özgürlügünün kamu düzenine aykirilik siniri, Istanbul : OnIki Levha Yayınları, 2020, p. 282.

Protecting the weaker party in the contract demonstrates a significant example in Turkish law of obligations. TCO art. 20-25 set the rules concerning the governance of the general standard terms in the contract. Even before 2012, the renovation year of TCO, the general standard terms should have met several criteria. They were recognized in order to establish the protection of the weaker party against the drafting party that has written the general standard terms per se on his/her own economic and non-economic motives in the contract. This non-written rule was accepted as a rule of public order before the renewed Law No. 6098 TCO.[11] The mentioned conclusion has a simple acknowledgment concerning the comparative law perspective. In German law, the concept of public policy is not the limit of freedom of contract; therefore, the abuse of rights is suitable for the illegality of the general standard terms. Nevertheless, when we look at TCO, there is public order among the limits of freedom of contract, and it does not need any additional legal concepts to point out the illegality of such terms in the contract.[12]

The public order's concretion with protecting the weaker party in the contract demands several essential topics related to the judges' authority. The rules of public order are always mandatory for all or one-sided in the sense of protecting the weaker party. However, the mandatory character of the rules of law needs to comply with the socio-economic interests of the society in the free market. There is an intra-legem concerning the public order in Art. 27 of TCO. The judge has the discretion to fulfill the meaning of the public order. The judge should overcome it using the following elements in specific cases. Economic public order should be taken into account, and this concept points out that the rules of law of obligations, if they have vast and widespread benefits to society, can be accepted as having the character of the rule of public order.[13]

The first element of the rule of public order is the substantial freedom of contract. The weaker party's freedom must be beyond the formalistic approach to the freedom of contract.[14] The substantial freedom of contract should be protected in the case of information asymmetry between contracting parties. The most favorable precaution against information asymmetry is the counterparty's obligation to inform the weaker party in the contract. Moreover, when the subject in the court is to protect the weaker party in the contract, the Turkish Court of Cassation has explained the judge's duty to research the background

[11] Atamer, Y., M.: *Sözleşme Özgürlüğünün Sınırlandırılması Sorunu Çerçevesinde Genel İşlem Şartlarının Denetlenmesi*, Istanbul: Beta Yayınları, 2001, pp. 190-191.

[12] Atamer, Y. M. (n 14), p. 201.

[13] Mestre, J.: L'ordre public dans l'économie, Rapport Français' Travaux de l'Association Henri Capitant, In: *L'ordre Public Journée Libanaises*, Eugéne Doucet Limitée, 1998, p. 136.

[14] BGE 123 III 292, 298.

of the transaction between the parties. It means that the judge needs to evaluate the socio-economic situation of the parties in the case to make a clear decision about the protection of the weaker party in the contract.[15]

The second element is the social side of the law of contract. The rule of public order must protect not only the individual party but also any future contracting party against facing the commonly seen examples of illegality in the same contract.[16] For example, the Assembly of Civil Chambers of the Turkish Court of Cassation had a decision concerning the nullity of the non-liability clause on behalf of the bank in the case of the digital leak of information from the accounts in an online banking application. If there were no judicial obstacles to the non-liability clauses, it could be an illegal and tempting example for other banking companies in their contracts. Turkish Court of Cassation also stated that if the freedom of contract leads the stronger party to dictate its own terms to the counterparty, it can be defined as freedom but, in a practical manner, become a privilege.[17]

Other elements should be mentioned, such as constitutional rights and principles and the principle of proportionality. Economic freedoms of the weaker party should also be one of the crucial facts during the process of protecting him/her in the contract. 'die Drittwirkungstheorie' from German law should also be kept in mind while the rule of public order is being applied.[18] Last but not least, the principle of proportionality is vital because of the ambiguity of the concept of public order. The rules of public order should be established only in specific cases and used as a last resort (*ultima ratio*).[19]

[15] Atasoy (n 10) p. 251. For example, the decision about the extremely high penal clauses in the contract, Turkish Court of Cassation Assembly of Civil Chambers No. 9-486/ 822, 15.10.1997.

[16] Turkish Court of Cassation Assembly of Civil Chambers, 2017/623, 2019/488, 18.04.2019, Turkish Court of Cassation Assembly of Civil Chambers, No. 3-717/850, 04.12.1996, Turkish Court of Cassation 11th Civil Chamber, No. 10033/12011, 16.11.2015.

[17] Turkish Court of Cassation 13th Civil Chamber, 1734/ 2495, 18.03.1996.)

[18] Farjat, G.: L'ordre Public Économique, Paris: LGDJ,.1963, pp. 103-104; Grundmann, S.: The Future of Contract Law, *ERCL: European Review of Contract Law*, 7(4) 2011, p. 509.

[19] Giger (n 10) p. 22-23, Atasoy (n 10) p. 353.

4. THE LEGAL BASIS OF THE EXPLOITATION OF RELIGIOUS BELIEFS IN THE CONTRACT

4.1. UNDUE INFLUENCE

The exploitation of the religious beliefs in the contract can become concrete as the deed of gift with the promise of heaven or when one sells their assets in religious belief which the buyer created, and the belief leads the member/advisee to the contract of sale that includes the extreme imbalance between the parties' pecuniary interests or contract of service without any remuneration which the employer is the religious adviser or group. It's a particular and widespread type of vulnerability in Turkish society.

Undue influence includes the group of cases formed in the common law. This notion is similar to this type of exploitation in Turkish society. Specific relationships between the parties have the presumption that the weaker party signed the contract under the counterparty's influence. It pressures the weaker party to enter the contract, which damages the weaker party's pecuniary interests. Vulnerability and dependency are the keywords for determining the particular undue influence cases. Certain recognized relationships between parties have intense intimacy bounded with trust that can lead to undue influence. The weaker party's burden of proof usually requests this specific type of relation between the parties in the contract. Also, the other requirement for the evidence of undue influence is the absence of any benefits for the advisee and the advisee's performance that requires an explanation. It means that there would be an enormous difference between the parties' benefits from the contract.[20]

As mentioned earlier, the pressure can be made by the counterparty or any other third party using so-called expertise in religion or spirituality.[21] Vows of poverty and obedience are usually given in religious or self-help groups or to a charismatic religious advisor/ leader of the believing group.[22] There is an asymmetric relation in the sense of power between the parties in the contract. When the weaker party gave these vows, they thought that the decision to

[20] Stonne, R.; Devenney, J.: *The Modern Law of Contract*, New York: Routledge, 2015, p. 362; Bigwood, R, Exploitative Contracts, *Oxford University Press*, 2003, p. 451. The advisee's performance could not be only the sale undervalue but also the conveyance of the title or working in religious or spiritual groups for an intense amount of time but free of charge. For an example of the case concerning the religious group called Opus Dei; Roche v Sherrington (1982) 1 WLR 599.

[21] Degeling, S.: Undue Influence and the Spritiual Economy, In: Barker, K., Grantham, R., Fairweather, K., Degeling, S. (Eds.) *Private Law and Power*, London: Hart Publishing 2017, p. 162.

[22] Allcard v. Skinner (1887) 36 Ch D 145, Stonne, R., Devenney, J. (n 21) p. 364.

make the contract was not a matter of hesitation or second-guessing.[23] Either being a good Christian and Muslim or even feeling relief in self-care courses are essential grounds for the weaker party's will of the contract. Performing the obligation is a must for the weaker party in accordance with their inner world even if he/she would expect any material reciprocity in or from heaven; for instance, as the counter-performance in the contract, the advisee reciprocally would have the propriety of land in heaven.

Which elements of undue influence should be considered for Turkish law? There are three main conditions that should be mentioned. The first is the continuous insistence on a contract by the religious adviser(s). Secondly, emphasis should be placed on possible religious/spiritual consequences without the contract by the adviser, the stronger party of the contract. The last element is the need for more independent legal guidance in favor of the advisee.[24]

4.2. IMMORALITY

The judge's discretionary power fulfills immorality as the limit of freedom of contract. However, the judge is not totally free on this mission; he/she must attribute to the rule of the act recognized publicly and approved by a frank person of average intelligence.[25] Can we say that the religious exploitation in the contract is immoral? This question has some connections with the grey area between immorality and the public order in Turkish law. The concepts of public order and immorality should have specific objectives that differ because they are independent limits of the freedom of contract. These limits have no hierarchic relation, and their playground is largely the same.[26]

The limitation of the economic freedom of the party in the contract must be a crucial example on this subject. The excessive restriction of the party's economic freedom is a situation that seriously hinders the pecuniary aspect of personality. The imbalance between the contracting parties' pecuniary interests might cause the restriction of the weaker party's economic freedom, which is contrary to *bonnes moeurs*. [27] Examples may be given, such as the enormous gifts or sales of assets under their market value to religious advisers

[23] Degeling, S. (n 22) p. 169.

[24] Stonne, R., Devenney, J. (n 21) p. 366.

[25] Oğuzman, Öz (n 2), p. 86, Eren (n 2) p. 323, Guillod, S. (n 3) p. 196 N. 69, Nomer, N. H.; Borçlar Genel Hükümler, 18 th ed, Beta Yayınları, Istanbul, 2021, p. 63.

[26] Serozan R., Engin, B. İ., Atamer, Y. M.: Medeni Hukuk Genel Bölüm/ Kişiler Hukuku, On Iki Levha Yayınları, Istanbul, 2022, p. 379.

[27] Serozan, R. (n 24) p. 378, Oğuzman, Öz (n 2), p. 87, Eren (n 2) p. 325.

in the contract. Nevertheless, it is a situation that violates the economic public order if this restraint occurs in large numbers and on a continuous basis in the national economic order.[28]

There is a blurred line between the contrariety to public order and immorality in the cases of void contracts due to the breach of TCO art 27. It is not crystal clear when it comes to clarifying the cause of invalidity, whether it occurs from immorality or public order. Frankly, it is hard to answer this question. The widely seen imbalances between the parties' interests or the enormously diminished economic freedom of the weaker party in the contract could be carbon copy elements for the following contracts. Similar invalid contracts in the free market are the demonstrative elements for separating these two limits in accordance with TCO.[29]

Furthermore, TCO art. 81[30] is a controversial provision but could be a reason to examine the public order more precisely. If the assets transferred in immoral contracts could not be reclaimed, the weaker party/advisee would not have any compensation for material damages.[31] In religious exploitation cases, the advisee's pecuniary interests would be damaged not only by the counterparty but also by this provision of TCO.

4.3. SANDHAUFENTHEOREM (SANDPILE THEORY): FRAUD, DURESS AND LESION

In some cases, more than one legal concept is needed to find an adequate solution. For instance, the case that does not supply all the conditions of the lesion (TCO art. 28) should be reconsidered with interrelated legal concepts like fraud, duress, and immorality. Nonetheless, it is used to determine the suitable solution for the concrete case with the method of interpretation called *Sandhaufentheorem*. This theory is one of the examples of the *Rechtsanalogie*. Under this principle of interpretation, if there is a loophole in the law, the unpleasant ambiguity will be surpassed by the joint and general basis in the multiple different rules of law.[32]

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28 Atasoy, K. (n 10) p. 176.

29 Atasoy, K. (n 10) p. 178.

30 *'Anything that is delivered with intentions contrary to law and morality cannot be reclaimed. The judge may nevertheless decide that the thing can be decided to be turned into the public property in the course of the suit brought.'*

31 Serozan, R.: Madde 81, in: İstanbul Şerhi Türk Borçlar Kanunu Yürürlülük Kanunu, Vedat Kitapçılık, Istanbul, 2019, pp. 712-713.

32 Serozan, R. (n 25) p. 155.

Among Turkish scholars, the prevailing opinion is that undue influence should be classified in the provisions of the defect in consent in Turkish law.[33] The sand pile theory is widely accepted in Turkish law for cases from the grey areas. This theory requires that the elements of similar concepts or related provisions should apply analogously to prevent religious exploitation. Thus, using the theory leads the judge towards a broad point of view. If the judge would approve imposing the interrelated terms analogously, primarily by extending the classical framework of the consent, it could compensate for the lack of element from a single, legal solution.[34]

In accordance with TCO, the provisions of the lesion, fraud, or duress request the deliberate conduct of the counterparty against the party that has the right to revoke the contract. This requirement might be difficult to fulfill in the subject of this paper. Most of the time, religious exploitations in the contract do not require the deliberate conduct of religious advisors. It is highly anticipated that they could defend themselves by saying that there was no request for gifts from their members/advisors, and they even could believe that the counter-performance has a reciprocal effect with their promise of heaven.[35]

The legal concept of defective consent of the advisee or their recklessness in the contract has the charm of the legal solution against the exploitation of religious beliefs according to Turkish law. However, is this really the situation in this specific type of exploitation in the contract? The weaker party can consciously enter the contract with the belief of inner peace resulting from the contract. There is no imminent and substantial risk of loss or damage to the party. Indeed, one cannot establish that the advisee's fear of burning in hell without the contract can be a legitimate condition in the system of TCO. In the exploitation of religious beliefs by the advisor or fake prophet, the advisees' idea of the risk of loss or damage is usually spiritual or concerned with life after death. Thus, this situation does not meet the legal condition of duress in TCO art. 38.[36] The mentioned provisions in TCO do not seem to have an effective solution against religious exploitation in the contract.

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[33] Serozan, R. (n 25) p. 382, Sağlam İ.: Haksız Etki, In: Doç. Dr. Mehmet SOMER'in Anısına Armağan, MÜHFHAD 12(3), Beta Yayınları, Istanbul, 2016, p. 690, Başoğlu B.: Miras Hukuku Özelinde Haksız Etkileme Kavramı ve Buna Bağlanabilecek Sonuçlar, *Galatasaray* Üniversitesi *Hukuk Fakültesi Dergisi*, 15(1) 2018, p. 403.

[34] Serozan R., Baysal, B., Sanlı K. C.: Borçlar Hukuku Özel Bölüm 4th ed, On Iki Levha Yayınları, Istanbul, 2019, p. 65, Kocayusufpaşaoğlu (n 4) p. 492.

[35] On this case the undue influence from the common law has not distinct answer to the question of whether the advisor's or religious leader's positive action is required. Degeling, S. (n 22) p. 168.

[36] '*Where the party under duress has a good cause to believe that an imminent and substantial risk of loss or damage to his own personal rights or property or to the personal rights and*

5. CONCLUSION: THE POSSIBILITY OF THE NEW PUBLIC ORDER RULE IN TURKISH LAW

Invalidating the contract, which leads the advisee to have a pecuniary burden because of the religious exploitation of the advisor, could be possible in theory with the *Sandhaufentheorem* from Austrian law or even with the notion of undue influence from common law. Nevertheless, there would not be any explicit rule in the provisions of TCO against the exploitation of the religious beliefs of the weaker party in the contract.

The asymmetric relationship between the parties in the contract usually tends to make exploitation on behalf of the stronger party in the contract. As a well-known example of the intervention in a contractual relationship constructed with free will, the information asymmetry between the contracting parties has a unique way of popping up in these concrete cases. Whatever the contract's name is, the stronger party would have an unworldly spiritual and strong influence over the counterparty that frequently becomes the weaker party in the contract.

When it comes to the cultural aspects of the case, religious beliefs/ spiritual tendencies are commonly one of the essential elements in the daily choices of Turkish society. In the concerned society, it does not matter whether the weaker party is from one of the big cities or lives in the rural areas. This unique type of exploitation in the contract could be seen in abundance. The assets are transferred to the fake prophets or religious advisers in search of inner peace and the expectation of heaven. This exploitation is an example of fraudulent people as an obvious way to get the most vulnerable people's assets. The vulnerability might come from the socio-economic features of the individuals in this type of contract. One can say that the fraudulent conduct turned into a specific way of deceit, which is widely present in Turkish society. The most crucial point of the subject is that it occurs in large numbers and on a continuous basis. Turkish courts must objectively use the legal and independent limit of freedom of contract, which is the contrariety of public order.

The public order in the law of obligations also requests defending the constitutional rights of the weaker party. The advisee's economic rights, freedom of conscience, and religion should be protected in these exploitative contractual relationships. One can find the essential rights and freedoms that must

property of persons close to him according to the circumstances, it is deemed that duress has taken place.
Where a contract is concluded by fear caused by the declaration that a claim raising from a right or from law will be used, it is deemed that duress exists under the condition that the declaring party is exporting excessive benefits from the straitened circumstances of the other party under duress.'

be established even in the law of obligations in the Turkish Constitution. In accordance with the Constitution art. 5, the state has the positive obligation to ensure the welfare, peace, and happiness of the individual and society and to provide the conditions required for the development of the individual's material and spiritual existence. Moreover, the Constitution art. 17 demonstrates that the parties have the right to protect and improve their corporal and spiritual existence in not only the legal relationship with the state but also the contract between the individuals that ought to be the subject of the rules of private law.

The classical concepts in TCO are usually insufficient to get adequate solutions to protect the member/ advisee's freedom of contract and pecuniary interests. The existing concept's elements cannot be extended to this specific example. The weaker party could be lured into the contract by the promise of the deed of the land of heaven or the guarantee of entry into heaven. The motivations to enter the contract are not legally defined as the duress and fraud conditions in TCO. The aforementioned provisions of TCO would not be able to cover all the possible cases of religious exploitation in the contract.

Finally, one should admit that the principle of the ultima ratio is a must at the possibility of the new written rule of public order in the law of obligations. This suggestion is tailor-made for the cases that suit the conditions of the exploitation of religious beliefs in the contract and do not meet all conditions of any other provision in TCO. It should be noted that public order has the characteristics that come from public law, and it is seen as a threat against legal certainty. Thus, it needs to be used as the last resort in the religious exploitation in the contract. For the possibility of the draft of a written rule of public order, the conditions of undue influence from the common law could be the starting point and guidelines for the Turkish judges and doctrine.

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