

## An Evaluation Regarding the Duties of Concordat Commissioners in Concordat Process

Araştırma Makalesi /Research Article

Kayahan TÜM<sup>1</sup>  
Banu ULUSAN<sup>2</sup>

**ABSTRACT:** Concordat, which had rare applicability in practice before amendments brought by Code Nr. 7101, is expected to maintain new maneuverability for debtors in financial difficulties while protecting the rights of creditors and establishing a more advantageous situation for them. In order to achieve these goals, a so to speak “conciliation” is ensured under supervision of court between debtors and creditors and thus both parties receive their rights and financial release at some point. While the process for this is ongoing, debtors are protected from possible legal pursuits and their transactions are supervised to prevent any damage to be done to creditors. Commissioners have a great responsibility to secure these functions of the concordat. In this study, the concordat process is examined basing on phases of the process, and the duties of concordat commissioners are clarified depending on each phase. In this context, the legal background is explained while accounting information and financial aspects are taken into consideration.

**Keywords:** Concordat, Concordat commissioner, Temporary period, Precise period

**JEL Codes:** M10, M40, K10

## Konkordato Komiserlerinin Konkordato Sürecindeki Görevlerine İlişkin Bir Değerlendirme

**ÖZ:** 7101 sayılı kanun ile getirilen değişikliklerden önce uygulaması fazla olmayan konkordato müessesesinin, alacaklıların haklarını koruyarak onlar için daha avantajlı bir durum sağlarken ekonomik zorluklar yaşayan borçlulara da daha fazla hareket alanı sağlaması beklenmektedir. Bu hedeflere ulaşırken borçlu ve alacaklılar arasında adeta bir uzlaşma sağlanmakta, böylece her iki taraflar da haklarına kavuşurken ekonomik rahatlamaya da ulaşmaktadır. Bu süreç devam ederken borçlular yasal takiplere karşı korunmakta, alacaklıların zarar görmemesi için de işlemleri denetlenmektedir. Konkordatonun bu işlevlerinin sağlanması için komiserlerin önemli görevleri bulunmaktadır. Çalışmada konkordato süreci aşamalarına dayalı incelenmiş, komiserlerin de görevleri bu bağlamda değerlendirilmiştir. Bu amaçla hukuki arka plan açıklanırken, konunun muhasebe ve finans yönünden gösterdiği özellikler de dikkate alınmıştır.

**Anahtar Kelimeler:** Konkordato, Konkordato komiseri, Geçici mühlet, Kesin mühlet

**JEL Kodu:** M10, M40, K10

<sup>1</sup> Doç. Dr., Hatay Mustafa Kemal Üniversitesi, Maliye Bölümü, kayahantum@mku.edu.tr, orcid.org/0000-0001-7716-3965.

<sup>2</sup> Arş. Gör., Hatay Mustafa Kemal Üniversitesi, İşletme Bölümü, banusaygili@mku.edu.tr, orcid.org/0000-0003-3896-3999.

## 1. Introduction

The word “concordat” means contract or agreement and is used for expressing the agreement conducted by debtors and creditors in the context of execution and bankruptcy law which regulates the obligation between these parties within the frame of mutually determined conditions (Sarısozen, 2019: 85). As an execution law term, a concordat is a form of collective execution that aims to have better results for creditors comparing to a possible bankruptcy process while preserving employment sources by maintaining continuity of debtor’s business (Altay and Eskiocak, 2019: 85; Pekcanitez and Erdönmez, 2018: 4; Konca, 2018: 8; Sungurtekin Özkan, 2019: 49).

Concordat is more similar to a *conciliation contract* conducted between debtor and creditors, rather than a collective or individual execution process (Kuru, 2013: 1444). Having more function after re-regulation with the amendments of Turkish Execution and Bankruptcy Code (İİK) brought by Code with Nr. 7101, has the essential goal of recovery of debtor’s situation and amelioration of debtor’s business and has no prerequisite of goodwill of debtor as a constituent (Altay and Eskiocak, 2019: 15; Kale, 2018: 214). With concordat, the debtor is able to suspend to perform the debt or have a discount and thus restructure the debts as well as being able to avoid bankruptcy, even if the debtor is a person that might be subject to a bankruptcy procedure (Altay and Eskiocak, 2019: 10; Kuru, 2013: 1446; Sungurtekin Özkan, 2019: 49); in addition, a bankrupt debtor can avoid the consequences of bankruptcy after conformation a bankruptcy concordat (Muşul, 2019: 375). In short, concordat is not only for liquidation but also for the reconstruction of the business of the debtor (Altay and Eskiocak, 2019: 3; Sarısozen, 2019: 85).

This study aims to determine the duties of certified public accountants, independent accountants, and financial advisors, and independent auditors as concordat commissioners on a theoretical basis. In this context, the nature of concordat, its position within the Turkish law, its varieties, a preliminary project in the concordat, and the duties of concordat commissioners who play an active role in the concordat process shall be examined.

It is also observed that other studies on concordat mostly focuses on concordat commissioners’ duties with respect of regulations while studies relevant to practice are less to be seen. Therefore, this study examines concordat based on its phases and duties of concordat commissioner are evaluated on this basis. Therefore, information regarding practice is given with background of accounting and finance, while legal background is also enlightened.

## 2. General Information on Concordat and Its Position in Turkish Law

Concordat is not newly introduced to Turkish law, even if it gained more functionality upon abolishment of bankruptcy adjournment and after Code Nr. 7101 entered into force. Being widely used until the amendments brought to İİK

by Code Nr. 4949, this form of procedure became inapplicable upon being limited to a period of five months and giving an opportunity to pursuit debtors afterward. Even after another amendment brought by Code Nr. 6728 which added a provision to İİK Art. 287 that gives authority to commercial court to suspend all pursuits against the debtor after this period, the application of concordat did not widespread because of the more advantageous nature of bankruptcy adjournment.

First with the suspension of bankruptcy adjournment with statutory decree (KHK) Nr. 669 in 2016 and after the abolishment of it with Code Nr. 7101, concordat had essential changes and especially with extension of periods, obtained a large functionality (Altay and Eskiocak, 2019: 7; Pekcanitez and Erdönmez, 2018: 3-4). Apart from these, the condition assurance found area of application in a narrow scope, the sufficient quorum condition for confirmation of concordat project was lessened and with these, it is aimed to resolve obstacles against functionality for concordat (Kale, 2018: 214).

Apart from the recovery of the financial situation of the debtor, concordat has some advantages for creditors as well; since the debtor is protected against possible pursuits and lawsuits and thus debtor's assets are protected, it is easier for creditors to obtain their claims (Pekcanitez and Erdönmez, 2018: 4). According to İİK Art. 294/1, no execution proceedings (including the ones basing on Code Nr. 6183- Code on Collection of Public Claims) can be commenced and ongoing proceedings shall be suspended within a precise period; no sanctions can be applied and all periods of prescription shall process. The consequences that are provided for a precise period are also provided for a temporary period (İİK Art. 288/1), therefore upon delivery of the documents provided in İİK Art. 286, the temporary period shall immediately be ordered and these consequences shall be arisen- which will enable creditors to obtain their claims in an easier way.

In addition to all these advantages, creditors, who cannot obtain their claims because of previous arrests on debtor's assets and also does not meet the conditions to participate in those arrests, will have the opportunity to have their claims with concordat- even if it is partial or conditional. Similarly, it is obvious that in bankruptcy proceedings, when a creditor partially obtains her/his claim and receives a certificate of insolvency (and therefore only be able to commence an execution process only when the debtor acquires new assets), concordat will be more advantageous (Muşul,2019:375). As a summary, concordat is a procedure which aims to protect creditors as well as debtor while taking public order into consideration (Altay and Eskiocak, 2019: 6).

### 3. Varieties of Concordat

So far, all information that is explained is relevant for *ordinary concordat*. Ordinary concordat is the general type of concordat provided in İİK. Apart from this, İİK also regulates *cessio bonorum* (İİK Art. 309/a- Art. 309/1). With this kind of concordat, the debtor transfers her/his authority on the assets to creditors, and

creditors obtain their claims by disposing of these assets, or debtor will transfer the assets to third parties with the condition of remitting to creditors partially or completely (Sungurtekin zkan, 2019: 50); the main goal is not recovery of debtor's situation but to satisfy the creditors (Pekcanitez and Erdnmez, 2018: 6). Even if the debtor does not aim to preserve her/his assets, with *cessio bonorum*, she/he aims to establish better conditions than a possible bankruptcy by transferring the assets (Altay and Eskiocak, 2019: 14; ztek et al., 2019: 135 fn. 2).

The other two varieties of concordat are *fixed-term concordat* and *discount concordat*. With fixed-term concordat, a fixed-term is set or installments are set for the debtor (ztek et al., 2019: 135 fn.3; Sarizen, 2019: 92); at the end of this provided term, debt is paid with accruing interest whereas, with discount concordat, the debtor is obliged to pay a certain amount of the debt and creditors renounce from that certain amount (Muşul, 2019: 378; Sariszen, 2019: 93).

These two forms of concordats can be provided in one concordat process simultaneously (mixed form of concordat) or as alternative demands (concordat with alternative demands)<sup>3</sup>. These forms are result of the contractual nature of concordat as well as its feature as an execution law procedure (Altay and Eskiocak, 2019: 12; Sariszen, 2019: 86). If a debtor has sufficient assets to pay all of her/his debts but relevant assets do not have immediate liquidity, it is possible to offer a fixed-term concordat; in this case, even if the debtor offers a discount concordat and the court is able to provide a temporary period, the court shall not provide a precise period (İK Art. 289/3) for the concordat has no capacity to reach success (Kale, 2018: 217, fn.1; ztek et al., 2019: 165 fn. 35). However, according to Preamble of Code Nr. 7101, in order to give courts the ability to evaluate each case within its conditions, such a limitation is not provided by İK.

#### 4. Form of Concordat Application

Persons who can apply for a concordat and required documents for application are provided in İK. Debtors who are unable to pay their debts in spite of the fixed term for payment is expired or unable to pay at the end of the relevant fixed term (İK m.285/1) can submit an application, as well as debtors that are under the risk of bankrupt (İK m.285/2). Debtors do not require to be merchants or legal entities in order to be able to apply for a concordat (Muşul, 2019: 406; Pekcanitez and Erdnmez, 2018: 7).

In case of a merchant applies for a concordat but is unable to fulfill the conditions of the concordat, according to İK Art.308, the court shall order for bankruptcy. Contrary to the situation before amendments provided by Code Nr. 7101, in order to bankrupt in this case, the debtor must be qualified as a person who can be

<sup>3</sup> See İstanbul BAM 17.HD 2018/2964E. 2019/64K, 24.01.2019 (Kazancı İBB, Access: 18.01.2020)

subject to a bankruptcy process (Pekcanitez and Erdönmez, 2018: 8). İİK did not provide a written form as a requisite for application by debtor whereas application by creditors must be submitted with a petition. This may lead to a conclusion that debtors can submit a verbal application (Pekcanitez and Erdönmez, 2018: 9)- however, taking the required documents for application provided in İİK Art. 286 into consideration, application with a petition will be more convenient. Debtors must explain the reasons for nonpayment as well as the process taking place until concordat offer and its consequences with the application (Sarisözen, 2019: 91).

Application for a concordat can be deemed as a confession containing arguments such as that debtor will not be able to pay within the fixed term, relevant debts must be restructured, in order to maintain the debtor's commercial existence, time and/or discount is required to a court which are not easy to be made in the commercial market (Altay and Eskiocak, 2019: 57). Therefore, the debtor does not necessarily require to be insolvent in order to apply for a concordat; suspension of payments is also sufficient for an application for concordat and is subject to plausible proof (Pekcanitez and Erdönmez, 2018: 9; Sarisözen, 2019: 93). Considering that debtor will reveal a certain amount of her/his financial situation, which is supposed to be confidential, the applicant must evaluate her/his financial situation and even must take action with experts in addition to have realistic assessments- otherwise, the debtor can face serious consequences, such as bankruptcy (Altay and Eskiocak, 2019: 58).

Legal entities shall apply for a concordat through their representatives. Partners of a private company must apply unitedly since the application for concordat is one of the exceptional transactions. At joint-stock companies board of management shall apply while at limited liability companies, managers, or board of managers shall apply. Since partnerships are not legal entities, they cannot apply as a partnership but if the conditions are met, individual application of partners is possible (Öztek et al., 2019: 145). Within conglomerates, each company shall apply pro se (Sarisözen, 2019: 100).

According to Turkish Commercial Code (TTK) Art. 377, companies that are heavily in debt can also apply for concordat without an obligation to prove that it is heavily in debt in interim balance (Pekcanitez and Erdönmez, 2018: 10; Sarisözen, 2019: 94). Attorneys need a special power of attorney in order to apply for a concordat in name of their clients (HMK m.74/1). A special power of attorney for concluding a settlement agreement will not suffice to apply for a concordat (Altay and Eskiocak, 2019: 57; Muşul, 2019: 403).

The time of the debtor's application has particular importance. Since the goal is to fix the financial situation, the time of application must be chosen accordingly; at the very least a bankruptcy threat must exist (Pekcanitez and Erdönmez, 2018: 11). The debtor can submit an application while a bankruptcy case is pending but a final decision is not given by the court; in this case, application for concordat must be a dilatory issue for the court (Muşul, 2019: 406; Öztek et al., 2019: 142).

According to İİK Art. 285/2, apart from the debtor, a creditor can also apply for concordat. The only requirement for a creditor to be able to apply is the capability to apply for a debtor's bankruptcy at the same time. Creditors might be able to start a bankruptcy pursuit or directly apply to the court for bankruptcy (ztek et al., 2019: 153). The reason for this criterion for creditors is the necessity of an advantageous situation of concordat in comparison with a possible bankruptcy process (Kale, 2018: 217). In this case, another condition for a creditor to submit an application appears as debtor's capability to bankrupt; for the debtors that cannot be subject to bankruptcy, the creditor cannot apply for concordat (ztek et al., 2019:154).

#### **4.1. Documents to be Submitted with Application**

Documents that must be submitted with the application are provided at İİK Art. 286. The most recent and primary document is a preliminary project. The function of this document is to determine whether the debtor is aware of the situation and if she/he does apply for concordat only with means to avoid possible pursuits as well as maintaining concordat commissioners perform their duties properly (ztek et al., 2019: 184).

Debtor shall provide the conditions of payment in case of success of concordat process with regards to time and amount in the preliminary project; the preliminary project is the base of an approved concordat. Even if the payment conditions in the preliminary project are altered, this cannot be deemed as novation since concordat does not cancel the previous obligation and constitute a new one (Altay and Eskiocak, 2019: 60).

A preliminary project, containing a payment plan, is also a recovery plan; therefore, the debtor must also submit recovery-related plans. The debtor must specify the payment plan and its conditions, the amount of payment that creditors shall disclaim, and whether the debtor will sell her/his assets (Regulation on Documents Annexed to Application for Concordat Art. 6). In this context, information on financial sources is to be given. In addition, plans for recovery of the financial situation shall be clarified at least on a basic level. These points are directly related to the recovery and payment plan nature of the preliminary project (Pekcanitez and Erdnmez, 2018: 15). It must be emphasized that İİK Art. 286/1- a set of minimum points relating to the preliminary project and every relevant aspect must be clarified (ztek et al., 2019: 185).

Apart from the documents demonstrating assets of the debtor, if the debtor is merchant, final balance, statement of income, cash flow table, interim balance (based on both going concern concept and a possible sale price of assets), ratifying of commercial books, electronic certificates, other types of documents explaining debtor's financial status, lists containing book value of tangible and intangible fixed assets and lists specifying every debt and credit with their fixed term must be submitted. Here, the main point is that these documents are only to

be obtained from a debtor who can answer such documents; a debtor who is not a merchant is not able to submit ratifying commercial books (Pekcanitez and Erdönmez, 2018: 16). Interim balances mentioned above are the same as the balances in TTK Art. 376/3. The aim of the submittal of these documents is to clarify future financial status as well as the financial status at the application date (Pekcanitez and Erdönmez, 2018: 17). For non-merchant debtors, an abstract declaration will not suffice; they are obliged to provide every kind of documents to clarify the creditors and the pursuit proceeded by them (Öztek et al., 2019: 190).

According to Regulation on Documents Annexed to Application for Concordat Art. 7/2, final balance, statement of income, and cash flow table must be subject to independent audit. Another condition for these documents is that less than a calendar year must be passed since the closure of the financial year of these documents; the date of other documents at relevant article must be prior to ninety days of application at maximum (Art. 7/3). Again, the documents provided at subclauses between (a) and (d) are to be prepared according to financial reporting standards (Art. 7/4).

Charts demonstrating the creditors, amount of credits, and privilege of creditors are one of the documents to be submitted with the application. This chart lists creditors while specifying privileged creditors mentioned at İİK Art. 206 at the same time. Even if it is possible to observe a resemblance with the share table at the bankruptcy process, it is possible to have amendments within this chart since additional credits can be notified and be accepted (Pekcanitez and Erdönmez, 2018: 17). Demonstrating the debts less than the actual situation or the credits which do not exist in this chart might lead to a situation of lack of good faith. In order to be able to invite creditors according to İİK Art. 299, addresses of creditors should also be written to this chart, even if this is not mentioned in İİK Art. 286/1-c (Öztek et al., 2019: 201).

The list demonstrating the comparison between the provided amount creditors will obtain according to the offer at the preliminary project and the possible amount in case of a possible bankruptcy is another required document for application, which is in accordance with the aim of “receiving more amount of money in comparison with bankruptcy” of concordat process and ensures clarification of whether such an advantage will arise and any kind of damage for creditors will occur (Pekcanitez and Erdönmez, 2018: 17). Regardless of the situation observed from this list, the final decision is to be taken by creditors. Values on the list must be current values (Öztek et al., 2019: 202). It is argued that this chart is difficult to issue since minimum liquidation amounts at bankruptcy process is identical to execution process, costs of bankruptcy cannot be foreseen and even if debtors offer contains more than minimum liquidation ratios, this will be hypothetical (Pekcanitez and Erdönmez, 2018: 18).

Before the audit report guaranteeing that the offer at the preliminary report will occur with its basis (İİK Art. 186/1-(e)) was provided with Code Nr. 7155, a “report issued by an independent audit authorized by Capital Market Board (SPK) or Public Oversight, Accounting and Auditing Standards Authority stating the offer at the preliminary report will occur with high probability” was among the documents to be submitted with application and SMEs were released from submitting this document. However, these reports were issues without applying any kind of standards in practice, therefore an amendment was made. Accordingly, an audit report will not be issued by an institution authorized by SPK; this report is to be issued solely by institutions authorized by Accounting and Auditing Standards Authority in accordance with Turkish Audit Standards (Altay and Eskiocak, 2019: 78). This report will not be issued by independent auditors but by independent audit institutions (Reg. Art. 4/1-a) (Öztek et al., 2019: 205). The report stating “reasonable guarantee” is different than an independent audit report; here, audit report only constitutes a base for concordat application and is directed to state a guarantee of accrument of the offer in the preliminary project (Reg. 12/1) (Öztek et al, 2019: 210). In addition, it is clear that such a report will require the collaboration of law, public finance, and accounting experts (Altay and Eskiocak, 2019: 84).

Even if the exemption of SMEs is annulled, Reg. Art. 5/2 regulates that non-merchant debtors are obliged that along with the preliminary project, list of credits and creditors, in accordance with the conditions of the situation, documents regarding financial status will suffice (Öztek et al., 2019: 206).

Reg. Art. 16 provides the definition of audit report stating reasonable guarantee. Accordingly, for an independent audit institution to issue this report, the offer at the preliminary project must appear realist (Öztek et al., 2019: 209).

#### **4.2. Temporary Period, Appointment, and Duties of Temporary Commissioners**

When the court determines that the documents and information explained above are complete, upon application for a concordat, will decide to a temporary period. For a temporary period, all measures to preserve the assets of the debtor are taken according to İİK Art. 297. Here, only a procedural evaluation will be conducted. A detailed evaluation is required in order to determine whether the information and documents submitted reflect the real condition of the debtor’s financial status. In order to achieve this goal, a temporary commissioner is appointed along with the verdict of the temporary period. Taking into creditors and amount of credits, three commissioners can be appointed either; in this case, one of these commissioners must be an independent auditor authorized by Accounting and Auditing Standards Authority (Konca, 2018: 12-18).

One of the main duties of the temporary commissioner during the temporary period is to submit reports relevant to the evaluation of whether the preliminary



project can be executed. In practice, temporary commissioners are observed to submit their reports within twenty days starting from their appointment. This preliminary report issued by the temporary commissioner contains findings related to the accuracy of documents and information on the debtor's financial status and foundations of the preliminary project. Therefore, this report must be issued taking into consideration mentioned hereafter.

The first step that a temporary commissioner will take upon appointment is to conduct a meeting with the debtor (in case the debtor is a company, its representatives) as soon as possible. In this meeting, the commissioner must explain the duties and authorities that the court granted to the commissioner with their extent and issue a report of this meeting. In addition, the commissioner must request financial and other kinds of data from the debtor that is necessary for the preliminary report. Among these documents and information, a list of debts and credits, cheques, information on employees and legal pursuits, current values of the assets can be mentioned (Kazan, 2021: 106).

One of the main financial documents and information to be examined by temporary commissioners is the balance sheet issued based on the principle of continuity and containing a market value of assets. The market value balance sheet mainly is the balance sheet demonstrating (company) assets market values. The accuracy of the data in this document is important for the evaluation of the temporary commissioner and thus for the success of concordat. Here, the temporary commissioner must commit an evaluation to determine whether the debtor went into debt.

When a company goes into debt, it cannot compensate the debts with the assets of the debtor. In order to have a court decision for a precise period, this situation must be determined by a temporary commissioner. However, even in this case, the court might order an expert opinion. To determine if the debtor went into debt is important since a preliminary project only providing the sale of internal resources and not mentioning any external source does not establish a suitable environment for concordat to success (Ermenek et al., 2020: 1358).

Another one of the main financial documents and information to examine is the income table and cash flow table- evaluation of these is important to expose the resources of the concordat project. In other words, the analysis of practicableness of the financial resources required for concordat requires examination of these documents by commissioners. Pro forma income sheet annexed to application contains expected profits and resources of them in concordat period. This document must be evaluated particularly in the context of information such as the revenue of previous years, the structure of costs, debts, and credits of the debtor, tax obligations, risks of the business, and industry. Similarly, at the pro forma cash flow sheet annexed to the concordat project, it must be shown that input of cash will be sufficient for the debts to be paid in the concordat process.

Another point to be examined by the temporary commissioner is the assets. Here, the commissioner shall compare the accounting record and accurate situation. At this point, a comparison between physical stocktaking and market values is essential. In addition, the temporary commissioner must subtract unsalable stocks from a balance sheet, control received advance payments for orders and consignee purchases and sales to accurate stocks of the debtor. Additionally, tangible and intangible assets are to be examined with regard to their physical amount and market value. In case of the commissioner is not capable to determine the market value, courts might appoint an expert.

The temporary commissioner shall also examine the debts and credits of the debtor. Credits must be evaluated one by one; especially to determine the accuracy of balance on buyers' accounts through interviews that will be conducted in a temporary period. Taking time factors into consideration, it will be more beneficial to start evaluation from the credits with the highest amount. Moreover, credits that are subject to legal pursuits and lawsuits and non-performing loans must separately be observed. Finally, through interviews conducted for debts, penalties and interests arising from contracts or financial liabilities must be ascertained in the most accurate form (Gkgz, 2017: 122-126).

Among the duties of the temporary commissioner, observation of the debtor's activities is mentioned at İİK Art. 290. Accordingly, the debtor will only continue to activities under observation and inspection of the temporary commissioner. It is natural to have the conclusion that commissioner must have a notion on debtors' activity field and industry; thus, decisions of commissioner will be more sound, which is important to protect the interest of creditors (Kazan, 2021: 106).

#### **4.3. Precise Period, Appointment, and Duties of Commissioners**

In order to decide on a precise period, the court will invite the debtor and applying creditor to a hearing. The duty of the temporary commissioner at this stage is to submit a report before the hearing and in case of necessity, to be present at the hearing to be heard before the court. Observing that the concordat process will succeed, the court decides for a precise period. According to İİK Art. 287/3, a commissioner will be appointed for a precise period. Temporary commissioners might continue their duties as commissioners in case of the court does not consider a new appointment necessary (Konca, 2018: 14; Pat, 2018: 4).

Upon appointment determination of assets and loan list subject to concordat are issued. Here, the commissioner determines the compatibility of assets and concordat offer.

In addition, the commissioner will invite creditors for a meeting in order to discuss restructuring mentioned in the concordat offer if at preliminary project reconstruction of liens in favor of creditors are claimed. Commissioner will report to the court if at the end of a meeting or within seven days following the meeting on these liens an agreement is reached (<http://cdn.istanbul.edu.tr>)

Certain consequences arose from a precise period. In the first place, no legal pursuits can be carried out, including the ones arisen from Code Nr. 6183. However, for privileged credits such as debts for employees or alimony, legal pursuits can be conducted in form of an execution process (Konca, 2018: 14).

Another consequence of a precise period is a limitation of the power of disposition of debtor. Accordingly, the debtor cannot establish the lien, be a guarantor, transfer estates or business even partially or conduct any kind of act of disposal. Transactions contrary to this rule are null and void. The court can decide on such transactions after offering commissioners and creditors for consideration.

#### **4.4. Validation of Concordat Project and Duties of Commissioners**

Preliminary project is not final but temporary (Pekcanites and Erdönmez, 2018: 15; Sarisözen, 2019: 95). It takes its final form at commercial court during the concordat process with remarks of creditors, board of creditors, and commissioners (Altay and Eskiocak, 2019: 61).

Before giving the preliminary project its final form, the commissioner must invite creditors for a meeting to discuss the concordat project. In this meeting, only creditors that are affected by the concordat project are authorized to vote. Commissioner will submit a report of whether the concordat project is accepted and if it is convenient to approve the concordat project, along with all documents regarding concordat within seven days after the meeting (İİK Art. 302).

Content of the report that the commissioner will issue will take its form according to compatibility to İİK Art. 305. Commissioner will state in this report whether creditors will receive a higher amount in comparison with a possible bankruptcy process, the offered amount is proportional with resources of the debtor, concordat project is approved by a majority of creditors (İİK Art. 302), and court expenses are paid by debtor in general (İİK Art. 305).

#### **5. Conclusion**

In recent years, fluctuations in some indicators such as interests and foreign currencies in the Turkish economy put several enterprises into a difficult position in the context of financial struggles. Therefore, it can be stated that with Code Nr. 7101, amendments were made to give more function concordat process and thus give debtors financial continuity which have difficulties on performing their obligations. The Concordat process provides debtors an opportunity to perform their obligations within a plan while ensures creditors a possibility to receive a higher amount of money in comparison with a possible bankruptcy process. Furthermore, problems of liquidity in markets arisen from an incapability to perform of debtors are aimed to be resolved by the aid of concordat.

In order to gain mentioned benefits above, concordat commissioners have a great deal of responsibilities. Starting from the temporary period to the approval of the concordat project, the duties of commissioners are vital. During this process, it is

expected from commissioners to supervise the activities of the debtor, contribute to the recovery of the financial status of the debtor and protect the creditors. Thereby concordat commissioner must establish a balance between debtor and creditors.

As specified at studies of Kazan (2021) and Gç et. al. (2019), concordat commissioners have significant duties and responsibilities within concordat process. Upon appointment starting from the decision of temporary period by the court, the commissioner must gather a meeting with the debtor. With this meeting, the commissioner aims to gather financial and other kinds of information of debtor, in order to be able to analyze the financial situation. In the light of this information, the temporary commissioner will examine the preliminary project and the documents annexed to the application. Among the most important documents to be examined, market value balance, pro forma income table, and cash flow sheet can be considered. A review of these documents is essential for determining financial resources for concordat and whether the resources and debts of the debtor are proportional. Furthermore, audit techniques such as physical count, inventory, compatibility of credits, and debts must be carried out while conducting these evaluations. These efforts are vital since they can be deemed as grounds for preliminary project which must be submitted to court within fifteen days following a temporary period is decided.

Commissioners have significant duties at phases of precise period and approval of concordat either. Within the precise period, commissioners are especially obliged to issue a list of loans subject to concordat and invite creditors to notify their credits as well as issuing a record of debtor's assets and determining market values of them prior to the approval of concordat (Gç et. al., 2019: 52). In addition, the commissioner has the duty of submitting a report to the court regarding information and documents of the concordat offer as well as whether the concordat project is accepted.

As a result the concordat commissioners, who are observed to be an equilibrant between debtors and creditors, have great importance with respect of sustainable development of a business, as well as effective use of economical sources.

### References

- Altay, S. & Eskiocak, A. (2019). *Konkordato ve Yeniden Yapılanma Hukuku*, İstanbul: Vedat Kitapçılık.
- Ermenek, İ., Özdemir, U. & Özalp, A. R. (2020). Bir Konkordato Nedeni Olarak Borca Batıklığın Tespiti ve Borca Batıklık Halinin Konkordato Sürecindeki Etkileri. *Çankaya Üniversitesi Hukuku Fakültesi Dergisi*, 5(1), 1351-1381.
- Gç, D., Alpaslan, H. İ. & Güneş, M. A. (2019). Konkordato komiserinin geçici ve kesin mühlet içerisindeki görevleri. *İstanbul Sosyal Bilimler Dergisi*, 24, 46-54.

- Gökgöz, A. (2017). İflasın Erteleme ve Borca Batıklık Bilançosunun Çıkarılması. *Journal of Accounting, Finance and Auditing Studies*, 3(3), 108-131.
- Kale, S. (2018). 7101 Sayılı İcra ve İflas Kanununda Değişiklik Yapılması Hakkında Kanun Çerçevesinde İflas Dışı Adi Konkordato. *İstanbul Medipol Üniversitesi Hukuk Fakültesi Dergisi*, 5(1), 213-269.
- Kazan, G. (2021). Konkordato Sürecinin Etkinliğinde Konkordato Komiserinin Rolü. *Vergi Raporu Dergisi*, 256, 101-108.
- Konca, K. N. (2018). Konkordato Uygulamalarına İlişkin Beklentiler ve Riskler. *Analiz: Konkordato Uygulamalarına İlişkin Beklentiler ve Riskler | Ekonomi | SETA*, 63.
- Kuru, B. (2013). *İcra ve İflas Hukuku El Kitabı*. Ankara: Adalet Yayınevi
- Muşul, T. (2019). *İflas ve Konkordato Hukuku*. Ankara: Adalet Yayınevi
- Öztek, S., Budak, A. C., Tunç Yücel, M., Kale, S. & Yeşilova, B. (2019). *Yeni Konkordato Hukuku*. Ankara: Yetkin Yayınları
- Pat, H. (2018). *Konkordato Komiserinin Nitelikleri ve Görevleri*, Konkordatoya İlişkin Güncel Gelişmeler - Erdem & Erdem (erdem-erdem.av.tr). (Erişim: 10.03.2021).
- Pekcanitez, H. & Erdönmez, G. (2018). *7101 Sayılı Kanun Çerçevesinde Konkordato*. İstanbul: Vedat Kitapçılık
- Sarisözen, M. S. (2019). *İcra İflas ve Konkordato Hukukundaki Yenilikler*. Ankara: Yetkin Yayınları
- Sungurtekin Özkan, M. (2019). Konkordatoda Alacaklılar Kurumu. *Yaşar Hukuk Dergisi*, 1(2), 47-70.