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THE EFFECT OF NATURAL DISASTERS ON TERMINATION OF THE EMPLOYMENT CONTRACT¹

DOĞAL AFETLERİN İŞ SÖZLEŞMESİNİN SONA ERMESİNE ETKİSİ

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ABSTRACT

Natural disasters occur suddenly at unexpected moments and can cause serious damages. The resulting damages not only affect daily life greatly, but also deeply affect working life. In this sense, natural disasters can cause damage to people's home and/or body integrity as well as work areas. In the event that a compelling reason arises in the workplace that requires work to stop for more than a week, the employee has the right to terminate the employment contract for just cause. In the event that a compelling reason arises in the workplace that prevents the employee from working for more than a week, the employer has the right to terminate the employment contract for just cause. The parties have certain obligations and rights in case the employment contract is terminated due to the inability to fulfill the obligation based on natural disasters, which can be characterized as a compelling reason. In addition, the situation of the employee whose health deteriorated due to natural disasters also gives the parties the right to terminate under certain conditions. In this study, the reflection of the disruption of the ordinary course of life on working life as a result of natural disasters such as earthquakes, overflows, floods and storms in recent times is discussed in terms of termination of employment contracts. At the same time, the rights of employees whose employment contracts have been terminated due to natural disasters and the rights and obligations of employers will be discussed, and an evaluation will be made on the reflection of the negativities experienced in working life. Thus, a resource can be created regarding the situation of employees whose working life has been adversely affected or even whose employment contracts have been terminated due to natural disasters.

Keywords: *Natural Disasters, Earthquake, Flood/Overflow, Termination for Employment Contract/Termination, Act of God*

¹This study is a revised and expanded version of the paper titled "İş Sözleşmesinin Feshi Bakımından Zorlayıcı Nedenler: Depremler ve Su Baskınları Haklı Nedenle Feshe Konu Olabilir mi?" presented at the 9th International Asos Law Congress held on May 9, 2023.

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ÖZ

Doğal afetler beklenmedik anlarda aniden ortaya çıkarak ciddi zararlara yol açmaktadırlar. Ortaya çıkan zararlar günlük yaşamı yakından etkilemelerinin yanında, çalışma hayatını da derinden etkilemektedir. Bu anlamda doğal afetler, hem kişilerin ev ve/veya vücut bütünlüklerinin hem de çalışma alanlarının zarar görmesine neden olabilir. İşyerinde bir haftadan fazla süreyle işin durmasını gerektirecek zorlayıcı bir sebebin ortaya çıkması durumunda işçinin; işyerinde bir haftadan fazla süreyle işçiyi çalışmaktan alıkoyan zorlayıcı bir sebebin ortaya çıkması durumunda ise işverenin iş sözleşmesini haklı nedenle feshetme hakkı doğmaktadır. Zorlayıcı neden olarak nitelendirilen doğal afetler sebebiyle iş görme borcunun yerine getirilememesine bağlı olarak iş sözleşmesinin feshedilmesi halinde, taraflar bazı yükümlülüklerle ve haklara sahip olmaktadır. Bunun yanında, doğal afetler nedeniyle sağlığı bozulan işçinin durumu da belli koşullar altında taraflara fesih hakkı tanımaktadır. Bu çalışma ile son dönemlerde yaşanan deprem, sel, su baskını, fırtına, yangın gibi doğal afetler nedeniyle hayatın olağan akışımın bozulmasının çalışma hayatına yansımaları, iş sözleşmelerinin sona ermesi bakımından ele alınmaktadır. Aynı zamanda, doğal afetler nedeniyle iş sözleşmeleri sona eren işçilerin hakları ile işverenlerin hak ve yükümlülüklerine ilişkin konulara da değinilerek, yaşanan olumsuzlukların çalışma hayatına yansımalarına ilişkin bir değerlendirme yapılmaya çalışılacaktır. Böylelikle doğal afetler nedeniyle çalışma hayatı olumsuz etkilenen, hatta iş sözleşmeleri sona eren işçilerin durumlarına ilişkin bir kaynak oluşturulabilecektir.

Anahtar kelimeler: *Doğal Afetler, Deprem, Su Baskını, İş Sözleşmesinin Sona Ermesi/Fesih, Zorlayıcı Neden*

Introduction

Natural disasters such as earthquakes, floods, overflows, fires and landslides are characterized as calamities that have devastating effects on human life. In some cases, despite taking all necessary precautions, it is not possible to prevent disasters. In addition to the loss of life, people also suffer serious financial losses with the loss of workplaces, businesses and homes. One of the most important effects of these natural disasters that cause financial losses is on working life in this sense. Due to natural disasters such as earthquakes, overflows, fires and floods, either workplaces become unusable/unworkable or activities in the workplace are stopped or suspended for various reasons (such as the employers' death, difficulty in material supply, restriction of the market). Similarly, in some cases, it is not possible for workers to access the workplace. In addition, natural disasters can also have serious psychological and traumatic effects on workers, can lead to various permanent or temporary health problems. As a result, the termination of the employment relationship, and therefore the termination of the employment relationship, comes to bring up for both employers and employees. In order to justify to terminate of labour contract, the concept of act of god should be clearly defined.

In labour law, act of god; refers to periodic situations based on external factors, which are not caused by the employer's management and administration and cannot be predicted in advance and therefore cannot be eliminated, which result in temporary reduction of working time or complete or partial cessation of activity in the workplace, and situations such as earthquake, epidemic, landslide, overflow, flood, epidemic disease, war, fire, mobilization, coup, economic crisis. In terms of labour law, the aforementioned act of god are extremely important in granting the right of justified termination of employment contract to both the employer and the employee. According to the clear provision in the Labour Law No. 4857², the existence of an act of god is absolutely required for the right of justified termination to be granted to the for both parties. Accordingly, in the Labour Law No. 4857, which grants the employer the right to terminate of employment contract for just cause, the act of god does not occur in the workplace but in the environment of the employee. In addition, it prevents the employee from working without any fault of the employee and prevents the employees' from performing his/her work. According to Labour Law No. 4857, act of god that occur at the workplace and prevent the employee from working for more than one week also entitle the employee to terminate the employment for just cause.

Due to natural disasters, certain rights and obligations of both parties to the employment contract, may be in question. In this study, basically explains the effect of the acceptance of natural disasters as an act of god on the termination of the employment contract. Thus, in addition to this, the study also discusses some responsibilities and obligations of the parties due to natural disasters and tries to explain the impact of natural disasters on working life from a broad perspective. For this purpose, within the scope of the study, how the concept of act of god is expressed in labour law, and then the effect of the concept of act of god on termination in labour law is discussed. Then, the acceptance of natural disasters as an act of god in terms for the termination of the employment contract in labour law and its effect on the termination and other rights and obligations of the parties to the employment relationship are tried to be explained within the framework of in Turkish Law and different Court of Cassation judgements³. In this way, a general assessment can be made regarding the rights and obligations of the parties to the labour contract, which have been seriously affected by these events, especially due to the recent earthquakes, overflows, floods and fires in Turkey.

Act of God in Labour Law

The most fundamental obligation of the employee in the employment relationship is to perform work and the employer to pay wages in return for this work. With the establishment of the employment contract, the parties are expected to fulfill their obligations in full. However, in some cases, it may become difficult or even impossible for the parties to fulfill their obligations after the establishment of the employment

² O.G.D., 10.06.2003, I. 25134.

³ <https://karararama.yargitay.gov.tr/> (Access Date: 20.06.2023).

contract. These situations lead the parties to the impossibility of performance or acceptance of performance fulfillment. In this sense, the impossibility is the objective and permanent impossibility of fulfillment of the obligation due to the events occurring after the conclusion of the contract, while the certainty of the obstacle to the fulfillment of the obligation leads to the impossibility of acceptance of fulfillment. Impossibility of performance may be based on the actual actions of a person or natural events, as well as natural, legal or material causes. In this direction, it is possible to express compelling reasons as natural events (earthquake, flood, overflow, landslide, drought, heavy snowfall, storm, etc.), mass movements (war, strike, mobilization, coup, uprising, etc.), legal reasons (export-import ban, expropriation, quarantine practices, temporary closure of the workplace, public interventions to the workplace, legislative changes, etc.) (Alan, 2022, p. 7-8; Yorulmaz, 2020, p. 1344-1345).

Although the concept of “act of god” is frequently used in the legal literature, there is no clear definition of the notion of force majeure in both the Labour Law No. 4857 and the Turkish Code of Obligations No. 6098⁴. Although they are different notions in practice, the concepts of “compulsory reason” and “act of god” are often used interchangeably⁵. The terms “act of god” and “force majeure⁶” are used interchangeably and have the same meaning. Law No. 4857 uses the concept of “act of god” (except for the expression of force majeure only in Article 34). In practice, force majeure is defined as situations that cannot be foreseen at the time the contract is concluded, that cannot be resisted when they arise, and that lead to an absolute impossibility of performance due to an external cause (Mollamahmutoğlu, et al., 2021, p. 235). However, according to the widespread opinion in the doctrine, the notion of compulsory reason is not identical to the notion of act of god

⁴ O.G.D., 04.02.2011, I. 27836.

⁵ The concept of compulsory reason is included in the provisions of Article 42/1 (according to this article, overtime work for compulsory reasons; “*during a breakdown, or if a breakdown is deemed possible, or in urgent work that must be done immediately for machines or tools and equipment, or in the emergence of acts of god, all or some of the workers may be made to work overtime, provided that it does not exceed the degree that will ensure the normal operation of the workplace*”) and Article 64/1 (according to the article, “*in cases where the work is stopped due to compulsory reasons, the workplace is closed before or after national holidays and general holidays, or the workplace is significantly below the normal working hours or is completely closed due to similar reasons, or the employee is given leave upon the request of the employee, the employer may have compensatory work for the periods not worked within four months*”) of the Labour Law No. 4857. At this point, it is stated that the situations based on compelling reasons, especially those stated in Article 42, help to determine the content of the concept of compelling reason. In this respect, a compelling reason can be explained as an extraordinary situation that occurs or is likely to occur for an involuntary reason outside or inside the employer's activities or the workplace and prevents or is likely to prevent the ordinary activities of the Workplace (Yuvalı, 2012, p.13).

⁶ For the study in which the concepts of force majeure and act of god are used in the same sense, see. Baycık and Tolu Yılmaz, 2021, p.211; Akıncı, 2020, p.65-68. In practice, different meanings are used. For sample decisions of the Court of Cassation where the concepts of force majeure and act of god are used interchangeably, see. CoC. 9.CC., D.01.05.2001, C.2001/4118, D.2001/7559 and CoC. 9.CC., D.22.01.2004, C.2003/22637, D.2004/535 (Baycık and Tolu Yılmaz, 2021, p.227). Force majeure, see. Top, 2021. Use of force majeure and act of god in law see. Belcastro and Weidner, 2020; Eikhoff and Waide, 2020; Brookes and Taitinger, 2017.

and it is accepted that compulsory reasons are a broader notion⁷ that also covers act of god, but is broader than them⁸ (Mollamahmutoğlu, et. al, 2021, p.386).

In the most general terms, act of god is explained as events that inevitably prevent the fulfillment of the obligation, arise outside the debtors' activity and/or workplace, and cannot be predicted and resisted (Yuvalı, 2012, p.2; Perillo, 1997, p.14-18). In another definition, act of god is defined as “*events that exceed a state in terms of severity and intensity of occurrence in the normal course of events, arise from outside the debtor's environment, are unforeseeable, are objectively impossible to avoid and resist, and lead to a breach of the obligation (temporary or permanent impossibility of performance or acceptance of performance)*” (Alan, 2022, p.36; Süzek, 2021, p.818). In another definition, act of god is defined as an event that cannot be avoided, cannot be foreseen⁹ in advance and comes from outside (Alan, 2022, p.36; Çelik et al., 2021, p.670).

The Regulation on Short-time Working and Short-time Working Allowance¹⁰ provides a legal definition of act of god only in the labour regulation. According to the definition in the this Regulation, act of god refers to “*periodic situations arising from external influences that are not caused by the employer's own management and administration, that cannot be predicted in advance, that cannot be eliminated as a result of this, that result in temporary reduction of working time or complete or partial cessation of activity, or situations such as earthquake, fire, flood, landslide, epidemic disease, mobilization*” (Art. 3/1-h). Apart from the aforementioned definition, as stated above, there are various definitions of the concept of act of god in doctrine.

It should be acknowledged that the definition in the Regulation will have a complementary effect in terms of labour law. Namely, as mentioned before, both the

⁷ As follows, in addition to act of god and in order to make it clear, it is stated that unforeseen/unexpected circumstances/cas fortuit and similar unforeseeable circumstances and extraordinary events may be in question for urgent works. In this sense, compulsory reasons include not only invincible situations, but also extraordinary events, unexpected events/cas fortuit or unforeseen events, which are foreseen as strong reasons. Compulsory reasons are generally defined as a situation that causes work to cease at the workplace or to work below normal working hours or to be completely suspended. From this point of view, it is stated that compulsory reasons are a notion above act of god. It is possible to define compulsory reasons as emergencies or extraordinary circumstances which are beyond the usual measures expected from the employer, which have no effect on the parties (no fault on their part) and which cause the work to stop (Yuvalı, 2012, p.24-25). Unforeseeable circumstances/cas fortuit are events where the breach of the obligation cannot be prevented by taking the measures expected from the debtor, whereas act of god is an event where the breach of the obligation cannot be prevented by the measures to be taken by anyone (Yuvalı, 2012, p.25; Gözübüyük, 1945, p.905). For detailed information on the differences between act of god and unexpected/unforeseen circumstances/cas fortuit, see. Alan, 2022, p.31-34; Baycık and Tolu Yılmaz, 2021, p.222-226; Yuvalı, 2012, p.32-34. A necessary cause differs from an unexpected event or a compulsory reason in that it encompasses not only an event that has already occurred but also an event/situation that is likely to occur (Alan, 2022, p.40).

⁸ This view emerges especially in the interpretations within the scope of compensatory work. For the opinions based on compulsory reason and act of god within the scope of compensatory work, see. Eyrenci, et al., 2019, p.322-323; Çelik, et al., 2017, p.647; Süzek, 2017, p.829-830; Ekmekçi, 2005, p.32 ff.

⁹ About cannot be foreseen see. Baycık and Tolu Yılmaz, 2021, p. 216; Berger and Behn, 2020, p.31.

¹⁰ O.G.D., 30.04.2011, I. 27920.

Turkish Code of Obligations No. 6098 and the Labour Law No. 4857 do not contain a clear provision on how the act of god¹¹ should be determined or understood; instead, there are provisions on the consequences of the existence of an act of god (Kayırgan, 2019, p.5). As can be understood from the above explanations, it may be appropriate to express the concept of act of god as a concept of the law of obligations in general. In terms of the law of obligations and labour law, it is accepted that the concept of act of god has the same legal concept, but the legal consequences are different. And it is also stated that the concept of act of god in labour law differs due to the unique structure of the employment contract (Alan, 2022, p.35).

In order for a situation to be accepted as an act of god, it must meet certain conditions. Accordingly, in order to qualify as an act of god, a compulsory or compelling extraordinary event must occur, the relevant event must take place outside the field of activity, an obligation must be breached by the act of god, there must be an appropriate causal relation between the act of god and the breach, the event in question must have occurred despite taking all kinds of measures (inevitability), the event characterized as an act of god must not be resisted (unpredictability), and the debtor must not be at fault in the occurrence of the act of god (Alan, 2022, p.5-16; Yorulmaz, 2020, p.1348-1353; Kayırgan, 2019, p.10-21; Yuvalı, 2012, p.4-7).

In practice, there are two theories on the subject of act of god, namely subjective and objective theories. In the subjective theory, in order for a situation to be accepted as an act of god, it is expected that the damage cannot be prevented although all possible care has been taken according to the current situation. In the objective theory, on the other hand, events that cannot be prevented despite the measures to be taken by the persons, unexpected, external events and events that occur outside the will of the persons are accepted as act of god (Yuvalı, 2012, p.3). The generally accepted theory in doctrine¹² is the objective theory.

In order for an act of god to be in question in terms of labour law, the employee must have fallen into a material or moral impossibility in the performance of the work and the employer must have fallen into a material impossibility in accepting the performance, and this current situation must be caused by the fault of the employee or the employer. Accordingly, natural disasters, fire, legally imposed prohibitions; events that make it impossible for the employer to accept the employee's performance of the work are referred to as act of god (Baycık and Toplu Yılmaz, 2021, p.228).

¹¹ On the indirect and direct definitions of the concept of act of god in practice and in the legislation, see. Kayırgan, 2019, p.4-10.

¹² There is an objective impossibility since the performance of the performance is not possible with the occurrence of an event characterized as an act of god (Alan, 2022, p.24).

Effect of Act of God on Termination in Labour Law

In general terms, termination is a right that causes the termination of the employment contract with a unilateral declaration of will (Mollamahmutoğlu, et al., 2021, p.235; Çelik, et al., 2021, p.497; Süzek, 2021, p.538; Güven and Aydın, 2020, p.268; Eyrenci, et al., 2019, p.185). The legislator grants the parties the right to terminate the employment contract if its continuity becomes impossible for any reason. Abrogation for the expiration of the employment contract occur in the form of termination with notice and immediate (termination for good cause, without notice) termination by the employer or the employee.

During the performance of the employment contract, in the event that the fulfillment of the contractual obligations becomes impossible, the parties are entitled to terminate the contract based on acts of god¹³(Alan, 2022, p.64; Kayırgan, 2019, p.98). The existence of acts of god relieves the debtor from fulfilling its obligation according to the general provisions. The fact that the performance of the obligation is not possible due to circumstances not caused by the debtor automatically terminates the contract and does not hold the debtor responsible for this situation. In this respect, the release of the debtor from his obligation due to the existence of acts of god is also valid for employment contracts (Yuvalı, 2012, p.10). In this respect, act of god in the law of obligations differ from the general provisions in labour law. Unlike in the law of obligations¹⁴, this does not immediately terminate the contract based on the existence of acts of god in labour law but gives the parties the right to terminate the contract after a certain period of time(Alan, 2022, s.64; Kayırgan, 2019, s.98; Yuvalı, 2012, s.11). Accordingly, in labour law (unlike in the law of obligations), a waiting period (the expiry of a certain period of time) is required for termination based on act of god.

According to the Labour Law No. 4857, in the event of an act of god that prevents the employee from working for more than one week, the employee has the right to terminate the employment contract immediately to Article 24/III of the Labour Law No. 4857. Similarly, in the event of an act of god that prevents the employee from working at the workplace for more than one week, the employer is entitled to terminate the employment contract immediately Article 25/III of the Labour Law No. 4857. The employee whose employment contract is terminated at the end of the one-week period due to such termination is entitled to severance pay if the conditions are met.

In cases of termination without notice/immediate termination based on act of god, the issue to be considered by the employee and the employer is that the existence and effects of the act of god must take place on the workplace and be related to the workplace for the

¹³ The notion of act of god in labour law was first introduced in the abolished Labour Law No. 3008 (in the provisions on termination, overtime work and work prohibitions).

¹⁴ As mentioned before, acts of god the impossibility of performance of the obligation in terms of the law of obligations.

employee to exercise the right of immediate termination without notice (Art. 24/III of the Labour Law No. 4857)¹⁵, whereas the effect of the force majeure must take place on the employee for the employer to exercise the right of immediate termination without notice (Art. 25/III of the Labour Law No. 4857). In the first case, workplace impacts may include demolition or burning of the workplace, damage to the working environment of the workplace, unsuitability of the workplace for work, lack of raw materials, lack of equipment or tools, lack of demand, shrinkage of the market, etc. An example of the effects that may arise in the employee is the inability of the employee to fulfill his/her work obligation due to the inability of the employee to come to work or to reach the workplace due to reasons such as earthquake, flood, inundation, fire, epidemic disease, heavy snow or rainfall, storm¹⁶. Moreover, there is no distinction in the provision on termination based on act of god in terms of whether the reasons preventing the employee from working at the workplace are temporary or permanent (Baycık and Tolu Yılmaz, 2021, p.219; Berger and Behn, 2020, p.16). Likewise, the Court of Cassation has a similar opinion¹⁷ (Kayırgan, 2019, p.41-42).

The existence of acts of god gives the parties the right to unilaterally terminate the employment contract, but failure to terminate the employment contract in the presence of compelling reasons results in the suspension of the employment contract. During this period, the employee's obligation to perform work and the employer's obligation to pay wages are temporarily postponed¹⁸. For the first week of the suspension period¹⁹, the employer is obliged to pay half wages²⁰ to the employee.

¹⁵ For example, in such a case, the Court of Cassation reversed the decision of the local court finding the employee justified and awarding severance pay. According to the aforementioned decision, "the employee left his workplace in Istanbul on the grounds that his house was damaged in the earthquake of August 17, 1999 and that his father and his family, who were living in a tent and were ill, needed him and claimed severance pay. The local court considered this as an act of god and ruled for severance pay. However, the court stated that such an interpretation of the employee's termination was erroneous and that the severance pay claim should be rejected on the grounds that the accepted act of god did not arise in the workplace and the employer did not terminate the employee's contract for this reason. For the decision, see. CoC., 9.CC. D. 01.05.2001, C. 2001/4118, D. 2001/75559 (Yuvalı, 2012, s.16).

¹⁶ https://www.bariserdem.com/pdf/zorlayici_sebep_halinde_ucret_ve_fesih.pdf (Access Date: 20.05.2023).

¹⁷ According to the aforementioned decision; "...It is explained that the employer has the right of immediate termination in the event of an act of god that prevents the employee from working at the workplace for more than one week. In the relevant provision, there is no distinction in terms of whether the reasons preventing the employee from working at the workplace are temporary or permanent. The one-week period mentioned in the article is the lower limit and the employer's right to immediate termination arises if the specified period is exceeded or if it is certain that it will be exceeded, as in the concrete case. There is no difference between temporary and permanent act of god in terms of the application of the article." For the decision, see. CoC., 9.CC, D. 09.04.2013, C. 2012/9643, D. 2013/11448.

¹⁸ For detailed information on the suspension of the employment contract, see. Yaman, 2016.

¹⁹ On the act of god being a reason for suspension, see. Yuvalı, 2012, p.20-21.

²⁰ "In accordance with Article 40 of the Law No. 4857, half wages are paid to the employee for the periods not worked within the scope of Article 25/III of the Law due to act of god." This regulation is also reflected in the decisions of the Court of Cassation. For the decision see. CoC., 9.CC., D.09.05.2026, C.2016/7116, D. 2016/11447.

Another issue that causes the right of immediate termination to arise in relation to act of god is the termination of the employment contract based on the health reasons of the employee. In cases where the employee is prevented from continuing to fulfill his/her employment obligation in cases such as illness, accident and treatment process, the employer's right to immediate termination arises within the scope of Article 25/1 of Law No. 4857. However, in order for the employer to exercise this right, a waiting period must have elapsed. It is possible for the employer to exercise this right after the notice periods in Article 17 of Law No. 4857 exceed six weeks. Also, the employer is not obliged to pay wages during this period when the employee cannot fulfill his/her employment obligation due to the suspension of the employment contract (Yuvalı, 2021, p.18).

Another situation that needs to be addressed regarding the termination of employment contracts for acts of god is the termination with notice. It is possible for the parties to the employment contract to terminate their employment contracts by notice termination of every time. However, it should be noted that while the employee is not obliged to show a reason for exercising this right as he/she wishes, the employer is obliged to base the termination with notice on a valid reason. According to Article 18 of the Labour Law No. 4857, the employer may terminate the employment contract for a reason arising either from the incompetence or from behavior of the employee or from the requirements of the workplace or the work. Therefore, the employer who wants to terminate the employment contract with notice based on acts of god must have a compelling reason that makes the workplace and/or the performance of the work impossible.

Another issue that should be evaluated in terms of the effect of acts of god on labour law arises at the point where the employee exercises his right to refrain from working due to non-payment of his wages based on compelling reasons. According to the provision in the Labour Law No. 4857, an employee who cannot be paid due to acts of god does not have the right to refrain from working (Yuvalı, 2012, p.21-22). From this point of view, it is necessary to accept that workers may exercise their right to refrain from working due to non-payment of their wages based on act of god, by evaluating the nature of the act of god. In such a case, while natural disasters may be a valid reason for non-payment of wages, it would be appropriate not to accept a reason based on economic crisis or financial problems of the enterprise in this sense.

As it is seen, situations such as interruption or disruption of transportation due to natural events such as floods, overflows, snow, earthquakes, storms, quarantine practices due to epidemics, and some legal reasons and mass movements/actions are accepted as acts of god in labour law practice. Acts of god are events that are not possible to know and take precautions in advance and that make it impossible to notify the employer in advance (İnciroğlu, 2023). Especially when the issue is evaluated in terms of the subject of the study, the biggest impact of natural disasters on employment contracts is related to the termination of the contract, but it also grants some rights and obligations to the parties to the employment contract.

Acceptance of Natural Disasters as Act of God in Labour Law and Its Effects on the Parties to the Labour Relationship

Natural disasters can occur unexpectedly and cause very serious and severe consequences. The occurrence of natural disasters in different ways leads to different consequences in different areas. When the issue is evaluated in terms of the employment relationship, the existence of natural disasters may necessitate the development of specific conditions on issues such as termination of employment contracts, suspension of the employment relationship, changes in wages and working hours and conditions, occupational health and safety measures and trainings. At the same time, it may also lead to changes in the labour relationship in terms of social security (especially in terms of death, disability, old age, work accidents and occupational disease, health, unemployment insurances and practices) or the development of different practices. In this sense, the acceptance of natural disasters as an act of god in terms of working life, and therefore in terms of labour law, should be evaluated from different perspectives.

It is observed in the decisions of the Court of Cassation, in practice and in doctrine that natural or legal causes (earthquake, fire, quarantine, accident, epidemic, flood, etc.) that cannot be foreseen in advance and cannot be avoided are generally adopted as act of god²¹; in particular, the inability of the workers to work as a result of their own actions is not accepted as an act of god, and the external reasons²² that prevent the worker from

²¹ For example, in one of its decisions, the Court of Cassation stated that “...*earthquake is the leading external factor that constitutes act of god. Act of god, on the other hand, is the whole of the unforeseen reasons that cannot be attributed to the debtor, and which make the violation of the obligation inevitable for the debtor. In the concrete dispute, since the defendant defends the existence of act of god and the breach of the provisions of the contract arising therefrom, and since the earthquake on 17.08.1999 is a well-known and famous event that does not need to be proved separately, the court should focus on this defense.*”. See CoC., 14.CC., D. 21.12.2004, C.2004/9192, D.2004/8960. In a contrary decision, the following provision is given: “*The damage of the plaintiffs arose because of the collapse of the building in which the deceased was located due to the earthquake. Although it cannot be accepted that the earthquake, which is not inevitable, is considered as an act of god and cuts the causal link with the damage, it must also be accepted that it is the biggest natural disaster that affects everyone in the region, which cannot be predicted when and at what magnitude it will occur and causes a great destruction when it occurs. In addition, the fact that the region is located in the first-degree earthquake zone and the magnitude of the earthquake should not be overlooked.*”. See CoC., 3.CC., D.15.03.2018, C.2016/7279, D.2018/2541. Another decision of the Court of Cassation on the subject is as follows “... *in the event subject to the case, the flood waters caused by the unpredictable amount of rain that rained with extreme violence and lasted for days dragged all kinds of motor vehicles, including trucks, quickly, thus causing large floods, due to the rapidity of the flood waters, many people were injured and many people lost their lives, in the region where the incident occurred, the commodities in many workplaces were mixed into the flood waters and drifted away, the increase in floods was caused by both the inadequacy of the manholes and the blockage of the waterways by all kinds of motor vehicles including trucks and buses, the defendant was not at fault in the concrete incident, the lack of license and occupancy of the warehouse it operated could not have an effect on the fault in the face of the incident, for a moment, this situation constitutes a fault, in other words, even if it is accepted that the defendant is jointly negligent, the summarized incident does not have a causal link between the operation of the warehouse and the damage, and it is understood that the damage was caused by flooding...*”. CoC., 11.CC., D.15.03.2017, C.2015/13527, D.15.03.2017 (Baycık and Tolu Yılmaz, 2021, p.214-215).

²² For example, in one of its decisions, the Court of Cassation clearly stated that the closure of the workplace will not be accepted as an act of god. In the aforementioned decision, “The plaintiff employee claims for

fulfilling his/her obligation to perform his/her work due to external factors are considered as acts of god²³(Kayırgan, 2019, p.41-42).

According to Article 25-III of the Law No. 4857, acts of god is related to the employee himself/herself and are the reasons that prevent him/her from attending the workplace. According to the explicit provision in the Law, the existence of a reason that prevents the employee from working at the workplace for a period of one week is accepted as an act of god, but it is not explained which situations may lead to this. In this sense, situations such as the occurrence of an earthquake in the region/location where the employee lives, flooding of his/her house, fire in his/her house, arrest of the employee or the declaration of martial law are considered as act of god (İnciroğlu, 2023). In addition, in the Short-Time Working Regulation, which is accepted as the only text defining acts of god in terms of labour law, situations such as earthquakes, floods and overflows are explicitly accepted as acts of god. In addition, the Presidency of Revenue Administration also recognizes natural disasters such as earthquakes as act of god in many sectors (Özer et al., 2023).

The impact of natural disasters on labour law first emerges at the point of ensuring the continuity of the employment relationship. The inability of workers to go to work due to natural disasters should be accepted as an acceptable excuse, and therefore as an act of god. Based on this, it is expected that the employee should not be dismissed directly due to natural disasters. At this point, the contrary situation may be considered as unfair and/or

severance pay and some labour receivables by stating that he terminated his employment contract due to the defendant employer's closure of the workplace. Although acts of god is not listed as consumers, both in doctrine and practice, natural events such as floods, snow, earthquakes, and restrictions imposed by state authority such as lockdowns and quarantines can be counted. In such cases, the employees are not entitled to notice pay. The effect of the closure of the workplace on the employment contract is different. Because the closure of the workplace is the definitive and permanent cessation of activity in that workplace. (4857 Law Art. 29/IV) The employer, not the employee, bears the business risk." For the decision, see. CoC., 9.CC., D.25.04.2008, C.2007/16205, D.2008/10253. In a different decision, a similar conclusion was reached. According to the relevant decision, "*it is stated that the employment contract is terminated due to act of god caused by civil war. Situations such as interruption of transportation due to natural events such as floods, snow, earthquakes, quarantine due to epidemics are acts of god. In the concrete case, the civil war, which is the reason for termination, is an act of god... In the event that the employment contract of the employee is terminated for act of god pursuant to subparagraph 25/III, the employer is not obliged to comply with the notice requirement or to pay notice compensation. However, severance pay must be paid in accordance with Article 14 of Law No. 1475.*". For the decision, see CoC., 9.CC., D. 03.07.2018, C. 2016/3450, D. 2018/14618 (<https://www.torunhukukburosu.com/depemin-isci-isveren-iliskisine-etkisi/> (Access Date: 20.06.2023)). For a similar decision, see CoC., 9. CC., D.09.05.2026, C.2016/7116, D.2016/11447. In a similar case, "*... The reasons preventing the worker from working must occur in the worker's environment. Causes arising from the workplace and preventing work are not covered by this article. For example, the closure of the workplace is not considered an act of god (Court of Cassation 9.CC. D.25.4.2008, C.2007/16205, D.2008/10253). However, situations such as interruption of transportation due to natural events such as floods, snow, earthquakes, and quarantine due to epidemics are act of god. Acts of god arising from the workplace are not within the scope of the aforementioned article but are the reasons that give the employee the right to immediate termination as regulated in Article 24/III of the same Law...*". For the decision, see CoC., 9.CC., D.09.05.2016, C.2016/7182, D.2016/11453.

²³ CoC., 9.CC, D.10.04.2013, C.2011/5857, D. 2013/11535.

invalid termination²⁴. In addition, it would be appropriate to accept the inability of workers to go to work due to natural disasters, especially earthquakes and floods, as a legitimate excuse and act of god in the sense of “absence from work”.

One of the effects of natural disasters in labour law is the inability of workers to continue working due to the damage to their health and body integrity through no fault of their own. In this case, in addition to natural disasters being accepted as an act of god, it would be appropriate to evaluate the absenteeism within the scope of Article 24/1 of the Labour Law No. 4857, which will be subject to the immediate termination of the employment contract for health reasons.

Another issue that should be evaluated in terms of the effect of natural disasters on labour law is the issue of half wages to be paid within a one-week period. If the employee cannot continue his/her work due to natural disasters (due to a reason arising from the workplace or himself/herself), the half wage to be paid within a one-week period should be paid within this scope, as natural disasters are also considered as an act of god.

Another impact of natural disasters in terms of labour law should be evaluated in terms of the situations that arise when the employer closes the workplace due to natural disasters. Namely, due to natural disasters, the employer may take an action to close the workplace whether the workplace is damaged or not. It is possible to accept the fact that the workplace cannot continue its activities due to the natural disasters damage as an act of god. But, the issue will need to be evaluated from a different perspective if the workplace is not damaged or there is no problem in terms of transportation to the workplace. In such a case, the employer does not have the right to terminate the employment contracts of its employees for just cause, even though there is no damage to the workplace and transportation to the workplace due to natural disasters. Otherwise, if the employer closes its workplace, it must pay all labour receivables, including notice pay and severance pay, for the employees it has not employed²⁵.

²⁴ In such cases, it is recommended that the prohibition of termination be imposed for the duration of the natural disaster and the period during which its effects continue to be serious. In the event that the employee's employment contract is terminated despite the application of the prohibition of termination, it is also among the opinions in practice that it would be appropriate to pay the wage and other social rights that the employee would be entitled to if he/she were working, and to file a reinstatement lawsuit after the prohibition of termination. It is also stated that the employer, who cannot employ his employee during this period, should pay the wages of his employee who cannot fulfill his obligation to perform his work, and that the state should also support the obligation to pay the wages in question.

²⁵ A Court of Cassation decision regarding the situation is as follows: *“The plaintiff employee made a claim for the termination of his employment contract due to the defendant employer's closure of the workplace and for the payment of notice pay and some labour receivables. Although acts of god is not listed as consumers, both in the doctrine and in practice, they are natural events such as floods, snow, earthquakes, and restrictions imposed by the state authority such as curfew and quarantine. In such cases, the employee is not entitled to notice pay. The effect of the closure of the workplace on the employment contract is different. Because the closure of the workplace is the definitive and permanent cessation of the activity in that workplace (Law no. 4857., art. 29/IV). The employer, not the employee, bears the enterprise risk.”*

Another area where the possibility of occurrence of natural disasters is evaluated in terms of labour law is in terms of taking occupational health and safety measures at workplaces. Especially to eliminate or minimize the destructive effects of earthquakes, the existence of measures and protective equipment to be taken in workplaces (in terms of buildings and annexes) is extremely important. The biggest responsibility here belongs to the employer. Since taking all necessary precautions will greatly reduce the damaging effects of natural disasters, it will be possible to prevent both loss of life and material losses. In this case, natural disasters, which are accepted as act of god, will minimize the impact of natural disasters on working life and especially reduce the cause of termination arising from the workplace.

Rights and Obligations of the Parties in Terminations Based on Natural Disasters

Due to natural disasters, both the employer and the employee may suffer serious economic losses. In this case, it may lead to some negative situations in legal terms. The most important of these is the termination of the employment relationship. The effects of natural disasters on working life are an extremely important issue, especially in terms of the termination of the employment contract, and therefore, it is an area where care should be taken to prevent the loss of rights of the parties. The termination of employment contracts by the parties may lead to the emergence of employees' wages, forms, and conditions of termination (such as the waiting period) and different consequences related to them due to the specific circumstances of the situation. Therefore, it may be appropriate to consider the effects and possible consequences of natural disasters, especially in terms of termination of employment contracts, in different situations for both employers and employees.

Rights and Obligations for Employees

Natural disasters, as mentioned earlier, often occur unexpectedly, and can cause great damage. The effects of natural disasters on the working life of workers arise especially in terms of the termination of their employment contracts and the associated economic losses. In addition to the fact that workers may terminate their employment contracts due to their inability to perform their jobs, they may also have certain rights due to the employer's failure to fulfill its obligations in terms of occupational health and safety. In addition, workers also have some rights in terms of social security practices due to natural disasters.

In the event that work/activity stops for more than one week in the workplace where the employee works as a result of disasters such as earthquakes, floods, overflows, fires, in short, natural disasters, the employee who survives the disaster in question has the right to terminate the employment contract without notice. Article 24/III of the Labour Law

See for the decision.CoC., 9.CC., D. 25.04.2008, C.2007/16205, D.2008/10253 (<https://www.torunhukukburosu.com/depremin-isci-isveren-iliskisine-etkisi/> (Access Date: 20.06.2023)).

entitles the employee to immediate termination with the provision “*If act of god arises in the workplace where the employee works that require the work to stop for more than one week*”. For the employee to terminate the employment contract for act of god based on natural disasters such as earthquakes, floods, overflows, etc., the act of god must arise in the workplace and be related to the workplace, as stated before. Therefore, the activity at the workplace must prevent the employee from fulfilling his/her employment obligation for more than one week. In addition, the cause in question must be a situation or event at the workplace that is unforeseeable, unavoidable, beyond fault, and makes it impossible to perform the work due to an external cause.

In order for the right of termination for acts of god to arise, the employee must also be in an impossibility of performance. In other words, although the employee is ready to fulfill his/her obligation, if he/she is unable to fulfill his/her obligation to perform, the right of termination is in question. If the employee is unable to fulfill his/her employment obligation due to an act of god, he/she will not be able to terminate the employment contract for just cause. It is stated that if the temporary impossibility of performance due to act of god²⁶ occurs at the same time around the employee and the employer, the right of immediate termination will not arise for both parties. Because in order to exercise this right, the party itself is expected to be ready to fulfill its performance (Göktaş, 2020, p.281).

In the event that the employee terminates his/her employment contract for just cause without notice pursuant to Article 24/III of the Labour Law No. 4857²⁷, as a result of the fulfillment of the aforementioned conditions, he/she is entitled to claim severance pay and half wages for the period of one week during which he/she did not work or could not work²⁸. The one-week period for the payment of half wages must include the paid weekend period (art. 46). The half wage shall be paid by the employer. If the employee does not terminate the employment contract after the one-week period in question, the employment contract remains suspended (Mollamahmutoğlu et al., 2021, p.225; Eyrenci et al., 2019; p.248; Süzek, 2017, p.729) and the worker’s right to claim half wages for the period after one week is eliminated. After the one-week period, if the conditions for short-time working allowance are met (under certain conditions), it may be possible to receive short-time working allowance. It is not possible for the employee to terminate the

²⁶ Temporary impossibility to accept performance is a temporary situation in which the employment contract is suspended (Mollamahmutoğlu et al., 2021, p.188). On the temporary legal impossibility of performance, see. Akıncı, 2020, p.72; Özçelik, 2014, p.583-588.

²⁷ In order for Article 24/III of the Labour Law No. 4857 to be applicable, the fulfillment of the obligation to perform work must become impossible due to an unforeseeable, unavoidable, no-faultful and external cause, in other words, the employer must be unable to accept the performance. For example, if the employment contract is suspended due to natural disasters such as fire, earthquake, flood, overflow, landslide or legal reasons such as seizure of the workplace by the government, suspension of work in the workplace due to road works by the municipality, import and raw material bans, the employee has the right to terminate within the scope of Article 24/III (<https://www.ozgunlaw.com/makaleler/depremde-isvereninsorumlulugu-nedir-1093> (Access Date: 20.05.2023)).

²⁸ <https://d.barobirlik.org.tr/2023/DepremzedelerIcinHukukRehberi/28/> (Access Date: 25.07.2023).

employment contract if the effect of the act of god lasts less than one week. The employee may terminate the contract after the period of impossibility of acceptance of performance exceeds one week. The employee who does not exercise his right to terminate the employment contract despite the expiration of the one-week period loses the right to terminate the employment contract based on act of god after the compelling reason disappears (Göktaş, 2020, p.281-285). In the event that the employer does not pay the rights specified in the law and to which the employee is entitled, the employee has the right to file a lawsuit at the labour court in the place where the employer is located²⁹. In addition, the one-week period spent without working is considered as worked in the calculation of the annual paid leave right in case the employee starts working again.

Although not closely related to the subject, another issue that should be evaluated regarding termination due to natural disasters is the exercise of the right to refrain from working by the employee. The employer should not terminate the employment contract of the employee due to the exercise of the right to refrain from working. Termination in this direction is an unfair termination and will lead to the consequences of unfair termination. Based on the provision of Article 13 of Law No. 6331, workers may temporarily cease the performance of their labour duties when they encounter a serious and imminent danger until the danger is eliminated. In line with this right, the cessation of work by the employees due to natural disasters in the workplace based on the encounter with a danger will not entitle the employer to termination. This situation should not be considered as non-fulfillment of the obligation to perform work.

In cases of injuries and deaths considered as occupational accidents due to natural disasters, applying to mediation is not a mandatory condition of litigation. However, the mediation agreement texts issued as a result of both mandatory and optional mediation applications will have the effect of a court decision. For this reason, it should be taken into consideration that after the agreement is reached during the mediation process, a different claim cannot be asserted, and a lawsuit cannot be filed on the same issues³⁰.

The employee's inability to attend work or to come to work or to the workplace due to disasters such as earthquakes, floods or overflows should be accepted as a justified and legitimate excuse and should not be considered as absenteeism of the employee. The employee should not be dismissed on this basis. Otherwise, the termination is considered an invalid and unfair termination³¹. In this case, the employee has the right to file a reemployment lawsuit.

Severance pay, annual leave, wages, and other labour receivables (such as overtime work, overtime work, weekends, holidays, and general holidays etc.) of workers who die due to natural disasters are paid to their legal heirs. In the event of the death of the worker, his/her

²⁹ <https://d.barobirlik.org.tr/2023/DepremzedelerIcinHukukRehberi/28/> (Access Date: 25.07.2023).

³⁰ <https://d.barobirlik.org.tr/2023/DepremzedelerIcinHukukRehberi/28/> (Access Date: 25.07.2023).

³¹ <https://jinepsgazetesi.com/2023/03/deprem-ve-is-hukuku/> (Access Date: 25.07.2023).

heirs cannot claim notice pay. The legal heirs of the deceased worker can claim the said receivables from the employer by proving that they are heirs with a certificate of inheritance. If the employer fails to make the necessary payment to the legal heirs, the heirs should first make a request through the mediation mechanism. In the event that an agreement cannot be reached, a lawsuit should be filed with the relevant minutes at the labour court in the place where the employee works, demanding the payment of severance pay. The statute of limitations for claims is five years³².

In the event that workers are exposed to any natural disaster during their work at the workplace, the provisions on occupational accidents should be applied. When workers are exposed to a natural disaster at the workplace or anywhere related to their work and their physical and bodily integrity is damaged, this is considered as an occupational accident. Therefore, the provisions of the social security legislation should be applied to employees injured due to natural disasters. In the event of the death of the employee in this case, it is expected that his/her beneficiaries will receive income from the occupational accident and occupational disease insurance, a pension from long-term insurance and other labour rights arising from labour law. At the same time, in the event that the employee dies due to a natural disaster while at the workplace, it is also possible for the relatives or the injured employee to claim material and moral compensation in connection with the employer's fault.

The relatives of employees who lose their lives due to natural disasters are also provided with death benefit within the scope of social security benefits. Death benefit is provided to the beneficiaries of an insured employee for whom at least 360 days of long-term insurance premiums have been reported. In addition, according to the Turkish Code of Obligations, the employer is obliged to make a payment (death indemnity) to the surviving spouse and minor children of the employee, and in the absence of a spouse and children, to the dependents of the worker, in the amount of at least one month's salary, or two months' salary if the service relationship has continued for more than five years (Art. 440). For the payment of the death indemnity, it is sufficient for the employee to have worked at the workplace even for one day.

Rights and Obligations of Employers

The obligations and rights of employers arising from working life due to natural disasters should be evaluated from a broad framework. In particular, the exercise of the right of

³² <https://www.manyas.net/depredenden-etkilenen-isci-ve-isverenlerin-durumlari/> (Access Date: 11.08.2023).

termination based on natural disasters and the employer's taking protective measures are the priority areas to be addressed in this context.

According to Article 25/III of the Labour Law No. 4857, "the occurrence of act of god that prevents the employee from working at the workplace for more than one week" gives the employer the right to terminate the employment contract for just cause. In order for the right of immediate termination to arise based on acts of god due to natural disasters such as earthquakes, floods, overflows, fires, storms, etc., the acts of god must have an effect on the employee, not on the workplace. The act of god should prevent the employee from coming to work for more than one week. For the termination of the employment contract due to the natural disasters in question, it is required that the employee cannot come to the workplace and that the obligation to perform work has not been fulfilled for acts of god. In this case, due to the act of god arising in the environment of the employee, the employee is unable to fulfill his/her obligation to perform work based on temporary impossibility of performance without his/her own fault. For example, in the event that the employee is unable to come to work due to the destruction of his house in the earthquake, the impossibility of perfect performance arises for the employee, the employment contract is suspended, and the employer's right to terminate immediately at the end of the one-week period arises due to the fact that the act of god occurred in the vicinity of the employee³³. In this case, the employer who terminates the employment contract is obliged to pay the employee severance pay and other labour receivables.

The employer is free to exercise this right of termination. In this case, the employer can either terminate the employment contract or wait for the employee to return to work when the conditions of the employee return to normal. During this waiting period, the employment contract remains suspended. During the continuation of the act of god, the employer's right to terminate the employment contract remains reserved and he may exercise this right whenever he wishes. In the event that the acts of god do exist, the employee will be obliged to work at the workplace and the employer will be obliged to employ the employee and pay his/her wages. At the same time, in the event that the workplace building is damaged due to natural disasters (such as damage, determination that it is not durable according to durability analysis, decision to demolish the workplace), both the employer and the employee are entitled to terminate the employment contract for just cause within the act of god.

In the event that there is an act of god based on natural disasters such as earthquakes, floods, overflows, etc. that require the work to be suspended for more than one week, half wages³⁴ are paid to the employees by the employer for the days not worked due to

³³ https://www.bariserdem.com/pdf/zorlayici_sebep_halinde_ucret_ve_fesih.pdf (Access Date: 20.05.2023).

³⁴ According to Article 40 of the Law, "*The worker who cannot work or is not employed due to compelling reasons shown in subparagraphs (III) of Articles 24 and 25 shall be paid half wage for each day up to one week during this waiting period.*".

the acts of god specified in both Article 24/III and Article 25/III of the Labour Law No. 4857. It should be noted that the employer is not obliged to pay wages for the period after one week.

In the event that the employee cannot come to work due to injury caused by natural disasters, the employer does not have the right to terminate the employment contract directly and without compensation. At this point, in order for the employer's right of termination to arise, the report period of the employee must exceed the notice periods of the employee and six weeks (Art. 25/I of the Labour Law No. 4857). The employer has the right to terminate the employment contract by paying the employee's severance pay upon the expiration of these periods. During the report period, the employee's salary is paid by the Social Security Institution (TBB, 2023, p.30). At the same time, pursuant to Article 25/1-b of the Law, in the event that there is no possibility of recovery of the employee who has health problems due to natural disasters, justified termination of the employment contract by the employer may also be in question.

Another situation that entitles the employer to terminate the employment due to natural disasters is under Article 25/II-g of the Labour Law No. 4857. According to the relevant article, "the employee's absence from work for two consecutive working days or twice in a month on the working day after any holiday or three working days in a month without permission from the employer or without a justified reason" entitles the employer to justified termination. However, in order for the employer to apply for justified termination, the employee must have a just cause. At this point, it would be appropriate to accept natural disasters as a just cause for termination and to evaluate the specific circumstances of the situation³⁵.

It is also possible for the employer to terminate the employment contract with notice based on natural disasters. According to Article 18 of the Law No. 4857, the employer may exercise this right in the presence of a valid reason. In order for the employer to exercise this right and create a valid reason for termination, there must be a valid reason arising from the requirements of the work, workplace or business. In such a case, the employer may terminate the employment contracts of the employees by paying the notice and severance indemnities and other labour receivables of the employees on the grounds that they have suffered economic loss based on operational factors due to natural disasters³⁶. In addition, if the employer closes a workplace that is not damaged due to natural disasters or if there is no damage to the roads providing access to the workplace, the employer does not have the right to terminate the employment contract for just cause.

³⁵ This is especially the case for workers who voluntarily participated in search and rescue, debris and relief operations during the recent earthquakes. See here. Aslan and Delifil, 2023.

³⁶ <https://www.manyas.net/depremden-etkilenen-isci-ve-isverenlerin-durumlari/> (Access Date: 11.08.2023).

In the event that the employer completely closes the workplace and does not employ workers, he/she must pay all labour receivables, including notice pay³⁷.

Employees may also be exposed to natural disasters, which are considered as act of god, while they are actually working at the workplace. In this case, it is important to evaluate whether the damage suffered by the workers due to the natural disaster is an occupational accident or not. According to the Law No. 5510 on Social Security and General Health Insurance, an occupational accident is defined as an event that occurs while the worker is at the workplace or during the time that the worker is not doing his/her main work due to being sent to another place outside the workplace on duty, or during his/her transportation to and from the place where the work is carried out with a vehicle/vehicle provided by the employer, and that causes immediate or subsequent physical and/or mental damage to the insured worker (Law No 5510, art.13). According to Law No. 6331 on Occupational Health and Safety, an occupational accident is defined as an event that occurs in the workplace or due to the execution of the work, which causes death or causes the body integrity to become mentally or physically disabled (Law No. 6331, art.3/g). Even though there is no direct connection between act of god and occupational accidents, in line with these definitions, it is necessary to accept as an occupational accident the loss of life of the employee or the mental or physical damage to his/her body integrity due to a natural disaster that the worker is exposed to while at the workplace or in any situation related to the execution of the work outside the boundaries of the workplace (TBB, 2023, p.30). At the same time, in the opinions accepted in practice and in the jurisprudence of the Court of Cassation, *“any event that occurs while the insured is at the workplace and disables the insured physically or mentally is an occupational accident. In order for the event to be considered an occupational accident, the accident does not only have to occur due to workplace conditions or the employer’s failure to take occupational safety measures. It is sufficient that the accident occurs at the workplace and therefore while the employee is under the authority of the employer. The intentional or negligent act of third parties who are not related to the workplace, the accident caused by natural events such as lightning strikes, earthquakes, etc. are also considered as work accidents.”* and such events are accepted as work accidents³⁸.

³⁷ For example; *“in the event that the employee cannot come to work due to the destruction of his house due to an earthquake, which is still in effect, the impossibility of perfect performance arises. In this case, the employment contract must be suspended, but the employer may terminate the employment contract for just cause after one week, if he wishes, since the act of god occurred in the vicinity of the employee. In this case, if the employee has completed one year, he/she will be entitled to severance pay; however, he/she will not be entitled to notice pay. However, as stated, the employer is free to exercise this right or not. The employer may either terminate the employment contract or not terminate the contract and wait until the employee can return to work. During this waiting period, the employment contract remains suspended.”* (Eyrenci, et al., 2020, p.247; https://www.bariserdem.com/pdf/zorlayici_sebep_halinde_ucret_ve_fesih.pdf (Access Date: 20.05.2023)).

³⁸ For example, if an employee working at the workplace or sent to another place outside the workplace during an earthquake loses his/her life or suffers physical or mental damage due to exposure to earthquake, this is considered as an occupational accident. Even if it is stated that if the accident is caused by natural disasters, the causal link is severed in terms of fault liability and the employer's liability will not be in

The employer may be held liable in the event of the death of employees at the workplace during a natural disaster. The employer's liability here arises from its obligation to ensure the safety of its employees at the workplace. However, it must be proven that the employer is responsible for the situation in question; in such a case, the employer may be held partially liable in proportion to its responsibility. Natural disasters may necessitate taking special measures specific to workplaces and providing special trainings on protection against natural disasters. In these cases, employers are expected to take protective measures and provide the necessary trainings to employees in the workplace against natural disasters³⁹. It would be appropriate to note that the employer may be subject to the provisions of strict liability in some cases and may be held liable in proportion to its fault in some cases, especially since the employer's area of responsibility is determined quite broadly within the scope of Law No. 6331⁴⁰. However, it should not be forgotten that the responsibility for taking all occupational health and safety measures and providing trainings in the workplace belongs to the employer.

Under Law No. 6331 on Occupational Health and Safety, employers are obliged to ensure the health and safety of employees in their workplaces. It is also the responsibility of the employer to prevent occupational risks, to take all necessary measures, including training and information, to organize, to provide the necessary tools, equipment and equipment, to adapt health and safety measures to changing conditions and to carry out the necessary work to improve the current situation. At the same time, employers are also obliged to monitor and inspect the measures taken in their workplaces, to eliminate nonconformities and to make or have made risk assessments⁴¹ (OHSL, art. 4/1). Failure of employers to

question, the employer is obliged to prove that he fulfills all his obligations and responsibilities in terms of occupational health and safety and takes the necessary measures (Taydaş, 2023).

³⁹ During a natural disaster, the employer may be held partially liable for the damages suffered by the employees due to the failure of the employees to comply with the protection measures despite all the protection measures and training on protection instructions. Therefore, in the event of an employee's death during a natural disaster, the employer's liability varies depending on the cause of the event, whether the employer acted in accordance with the measures and whether the employees adhered to them (<https://www.ozgunlaw.com/makaleler/depremde-isverenin-sorumlulugu-nedir-1093> (Access Date: 20.05.2023)).

⁴⁰ In a decision of the Supreme Court of Appeals General Assembly of Civil Chambers on the issue of holding the employer responsible in terms of occupational health and safety measures, it is stated that "*In order for the employer to be held liable for material and moral damages arising from occupational accidents, it is not sufficient for the incident to be an occupational accident, it is necessary to prove that the employer has acted or neglected against the obligation to take occupational safety measures and to show care. It is possible to determine and prove whether the employer is at fault or not, and the rate of fault, if any, only through a fault report to be prepared by expert witnesses...*". For the decision, see CoC. GCL., D.20.03.2013, C.2012/1121, D.2013/386.

⁴¹ At this point, it should be noted that as a result of damage to the workplace due to natural disasters, the employer is obliged to fully or partially renew the risk assessment "in the event of the emergence of a new hazard arising from outside the workplace and affecting the workplace" pursuant to Article 12/2-f of the Occupational Health and Safety Regulation.

fulfill their obligations specified in the legislation in terms of occupational health and safety at all or as required may result in administrative, legal and criminal liabilities⁴².

The main responsibility for taking measures against natural disasters at workplaces, especially disasters whose damage can be minimized by protection and safety measures, belongs to employers. These measures, which can be considered within the scope of occupational health and safety measures, will not only minimize the potential damage to the workplace, but also protect the health and safety of the employees in the workplace during the disaster. For this purpose, in addition to basic occupational health and safety measures, it is necessary to determine what to do before, during and after a natural disaster (earthquake, storm, flood, etc.), to make the necessary workplace preparations, to form emergency teams and determine coordination, to prepare and provide the necessary response materials/equipment, to determine the necessary directions for emergency exits, to ensure that the workplace buildings and annexes⁴³ are structurally compliant with the rules and procedures, to carry out regular site checks, to distribute tasks among the employees⁴⁴. Implementation of such measures and precautions should be considered within the scope of the employer's general obligation under the Occupational Health and Safety Law to "take all precautions in the workplace" and the employer should be expected to fulfill this obligation without exception. At the same time, the obligation to protect the personality of the employee under the Turkish Code of Obligations (art. 417) should also be considered within the scope of the employer's duty of care. Within the scope of the duty of care, the employer is obliged to protect and improve the health and safety, life and physical integrity of its employees.

A General Evaluation

Natural disasters occur in many different ways such as earthquakes, floods, overflows, storms, snowfalls and landslides. These natural disasters have a serious impact on working life as well as daily life. The biggest effects of natural disasters on working life are observed in the economic field. Natural disasters stop or interrupt working life and may lead to income losses and expense increases for both employees and employers. In addition to their short and temporary economic damages, natural disasters may also cause job, workday and labour force losses in some cases, leaving the actors of working life in a difficult situation and causing various problems.

One of the major problems caused by natural disasters in terms of working life is the termination of employment contracts. With the acceptance of natural disasters as acts of god in terms of labour legislation, natural disasters become an issue that allows the

⁴² In this context, employers can be involved in administrative fines or legal processes (<https://www.ozgunlaw.com/makaleler/depremde-isverenin-sorumlulugu-nedir-1093> (Access Date: 20.05.2023)).

⁴³ In addition to the provisions of Law No. 6331, the provisions of the Regulation on Health and Safety Measures to be Taken in Workplace Buildings and Annexes should also be taken into consideration.

⁴⁴ For information on what to do especially against earthquakes, see Taşyürek, 2019, p.7-11.

termination of employment contracts, especially for just cause. In terms of labour law, acts of god are, in the most general terms, events that prevent workers from fulfilling their obligations to perform their work. In this sense, Labour Law No. 4857 gives both employees and employers the right to terminate the employment contract immediately if the act of god lasts longer than one week. During this one-week period, employers are obliged to pay half wages and after one week, both parties can terminate the employment contract if they wish. In the justified termination of the employment contract by the employer for act of god, the employer is obliged to pay the employee's labour receivables such as severance pay, annual paid leave, overtime pay, week holiday pay. However, there is no obligation to pay notice pay. Similarly, the employee has the right to demand severance pay and other labour receivables in the event that the employment contract is terminated due to natural disasters, and therefore for acts of god. At the same time, it is possible for both employees and employers to terminate their employment contracts with notice due to natural disasters. In order for employers to terminate the employment contract with notice termination, they must justify that they have suffered serious economic damage on an operational scale due to natural disasters.

The presence of workers at the workplace during natural disasters and their exposure to damage (death or injury) are considered as occupational accidents. As a result, they are subject to the consequences of work accidents in terms of labour law and social security law. Taking protective and preventive measures for natural disasters at workplaces and preparing workplaces for natural disasters are part of the employer's obligation under occupational health and safety. Employers are obliged to take all necessary measures for occupational health and safety in their workplaces. In this respect, workers may be exposed to hazards arising from measures not taken properly by the employer or new risks due to natural disasters. In these cases, it should be recognized that it is possible for employees to exercise their right to refrain from working. The fact that natural disasters pose a serious and imminent danger during and after their occurrence gives employees this right. The employer may not terminate the employment contract due to this situation.

Natural disasters are events that occur unexpectedly, are unpredictable and have serious effects. It is possible to minimize this situation caused by natural disasters through precautions and protective measures. In workplaces, this obligation belongs to the employer. Employers are expected to develop practices specific to protection from natural disasters, especially in terms of occupational health and safety measures, to prepare all necessary materials and equipment, to create emergency action plans, to conduct special training and awareness-raising activities related to protection and to repeat them regularly, to provide coordination and to develop cooperation. In terms of social security, it may also be useful to organize protective and facilitating provisions for those exposed to natural disasters in disability, death, old age, unemployment and health insurances. At the same time, the establishment of paid leave supports, additional compensation and incomes as well as employer-specific incentives and support mechanisms for those exposed to natural disasters may also facilitate the process. Observing the principle of

termination of employment contracts due to natural disasters as a last resort (ultimo ratio) and the parties acting in accordance with the rules of good faith and honesty towards each other will contribute to overcoming this negative process more easily.

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