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**Jurisdiction in Life Insurance Contracts:
Insights from Turkish Private International Law
and European Union Regulations**

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Abstract

This article explores the jurisdictional framework governing life insurance contracts under private international law, with a particular emphasis on Turkish regulations. It examines how Turkish law prioritizes the protection of weaker parties such as policyholders and beneficiaries by limiting jurisdictional agreements that could undermine their rights.

The study also addresses challenges arising from foreign elements in insurance contracts and the practical implications of these provisions in cross-border contexts. A comparative analysis with the EU's Brussels I bis Regulation highlights the strengths of Turkish law in safeguarding weaker parties while identifying areas for improvement, such as more specific rules for large-risk contracts and international disputes. The article concludes by advocating for a balanced integration of international best practices into Turkish private international law, ensuring robust consumer protection, equitable access to justice, and competitiveness in a globalized insurance market.

Key Words

Life Insurance Jurisdiction, Turkish Private International Law, Consumer Protection in Insurance, Cross-Border Insurance Contracts, Brussels I bis Regulation

Introduction

Human beings have always had concerns about old age. These concerns have led them to take various measures to guarantee their future. Today's modern life has brought risks as well as increasing needs. Because every technique that makes life easier can also cause a risk. In addition, in order to meet the economic values that modern life has made a necessity, it has become compulsory to have a certain amount of individual capital at every stage of life. So, as well as private pension systems, life insurance was created to help people live comfortably in old age and to ensure that their families is taken care of after their death¹. So, it can be said that life insurance is the insurance of events related to human life².

In Turkish law, insurance types are divided into property insurance and life insurance. These types of insurance are based on completely different principles, and the basic rule in property insurance is that the sum insured (the subject of the insurance) is equal to the insurance value. In life insurance, human beings constitute the subject matter of the insurance. So, the rule of the insurance value can be determined freely since it's not possible to assign a specific value on human life. Therefore, the rules of excess insurance, underinsurance, joint insurance, partial insurance and double insurance do not apply to life insurance³.

Life insurance is regulated under Turkish law between Articles 1478-1520 of the Turkish Commercial Code (TCC)⁴. The life insurance types are divided into life, accident, sickness and health insurance. In addition to the provisions of the TCC, life insurance is

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- ¹ Rıza Ayhan, Hayrettin Çağlar and Mehmet Özdamar, *Sigorta Hukuku*, 5th ed. (Yetkin Yayınları, 2021), 351.; Düzgün Sayan, *Hayat Sigortası* (Master's thesis, Istanbul University, Social Sciences Institute, 1996), 2.; İbrahim Paçacı, "Hayat Sigortaları ve Bireysel Emeklilik Sistemi," *Mütefekkir Aksaray Üniversitesi İslami İlimler Fakültesi Dergisi* 4, no. 8 (2017): 313-338, 314.
 - ² Mustafa Çeker, *6102 Sayılı Türk Ticaret Kanununa Göre Sigorta Hukuku*, 17th ed., 309.
 - ³ Çeker, 19.
 - ⁴ Turkish Commercial Code, No:6102, Official Gazette: 14.02.2011, 27846 (TCC), (6102 Sayılı Türk Ticaret Kanunu).

also included in the Insurance Code⁵, which was originally enacted to regulate insurance institutions. According to Article 5 of the Insurance Code, insurance companies and reinsurance companies must obtain a license from the Turkish Ministry of Treasury and Finance⁶ for each branch of insurance they wish to operate. In addition, insurance companies may operate in only one of the life and non-life insurance groups⁷.

In Turkish law the idea of protecting the weaker party in the contract has found application in various contractual relations,⁸ especially in employment, lease, consumer and insurance contracts. In international procedural law, this protection also found application especially in Brussels I bis Regulation⁹ covering EU law. The concepts of insurance interest, subrogation and risk come to the fore in life insurance. The type and conditions of life insurance are determined by the insurance contract. However, in practice, the contract in question is almost always drafted in a lump sum by the insurance companies and is presented by the policyholder only in the form of acceptance or rejection. From this point of view, necessity arises to protect the policyholder.

1. Foreign Element and Classification in Insurance Contracts

Depending on the type of life insurance, various foreign elements may arise. The foreign element in life insurance may arise when the insurance company is a foreign company, the insured or the beneficiary is a foreigner, the place of conclusion or performance

⁵ Turkish Insurance Code No:5684, Official Gazette: 14.6.2007, 26552 (5684 Sayılı Sigortacılık Kanunu).

⁶ Republic of Türkiye Ministry of Treasury and Finance, (T.C. Hazine ve Maliye Bakanlığı)

⁷ Ayhan, Çağlar and Özdamar, 351, 352.

⁸ Vahit Doğan, "Milletlerarası Özel Hukukta Zayıf Akit Tarafın Korunması," *Public and Private International Law Bulletin (MHB)* 15, no. 1-2, (1995): 21 – 42, 22.

⁹ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Brussels I bis), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32012R1215>.

of the contract is outside Turkey or in various other circumstances as stated below.

The insurance against the possibility of life or death is not a loss insurance since the value of human life cannot be measured¹⁰, and a sum of money is paid upon the occurrence of the risk according to Turkish law. In the event of death, this payment is made to the designated beneficiary, while in the event of survival, it is made to the policyholder, unless otherwise specified in the contract. In this case, the foreign element may arise in various situations such as the fact that one of the parties to the insurance contract or the beneficiary is foreign, the contract is concluded in a foreign country, or the insurance risk involves the possibility of death or survival in a foreign country.

Similarly, in accident insurance, the foreign element may arise in cases where the place of the accident is outside Turkey, the insurance company is foreign or the insured is foreign according to Turkish PILA.

Sickness and health insurance are other type of life insurance that may also have a foreign element, and sickness and health insurance may be compulsory or optional if a Turkish citizen or foreigner is in the country with a visa or other legal status. The question of whether there is a foreign element should be examined separately for each case.

Also, in a private international law dispute, it is necessary to make a qualification and to determine whether the dispute arises out of tort, contract or another legal relationship. Since the insurance policy constitutes the basis of the insurance relationship, it is highly unlikely that the question of the qualification of this relationship will arise. However, in cases where the policyholder concludes the insurance contract as a consumer, it may be necessary to qualify the contract as a consumer contract¹¹.

¹⁰ Barış Günay, *Sigorta Hukuku*, 4th ed., (2022), 246.

¹¹ Nuray Ekşi, *Türk ve Avrupa Birliği Hukukunda Yabancı Unsurlu Sigorta Sözleşmelerine Uygulanacak Hukuk*, (2012), 17.; *In the United States of America (USA), there is a qualification problem in insurance contracts between the states. The*

Whether the Turkish courts have jurisdiction or not may be a question if the parties or the contract has no connection with Turkey. However, in cases where the insurance company is Turkish and the policyholder is foreign or the insurance company is foreign and the policyholder is Turkish, the foreign element will arise in many different possibilities. These might be such as the occurrence of the disease or health problem in or outside of Turkey. Also, it will be necessary to discuss the international jurisdiction of Turkish courts. In cases where the jurisdiction of Turkish courts is accepted pursuant to the Act on Private International and Procedural Law (Turkish PILA) (*Milletlerarası Özel Hukuk Ve Usul Hukuku Hakkında Kanun – MÖHUK*)¹², it will be analyzed whether there is a consumer transaction or not, and if it is accepted as a consumer transaction, the applicable law will be determined in accordance with Article 26 of the Turkish PILA. In the event that it is not a consumer transaction, the applicable law will be determined in accordance with Article 24 of the Turkish PILA which applies to general contracts. As a matter of fact, there is no special provision regarding the applicable law to insurance contracts, except for the exception in Article 34 on torts. In this respect, Turkish law differs from the Rome I Regulation, which regulates the contractual conflict of laws rules in European law¹³.

regulation of insurance companies in US law, like many other legal arrangements, is divided between the states and the federal government. Each of the 50 states regulates the activities of insurance businesses within its borders and has its own laws on insurance contract terms. See also: <https://iclg.com/practice-areas/insurance-and-reinsurance-laws-and-regulations/usa>

¹² Act on International Private and Procedure Law, No: 5718, Official Gazette: 12/12/2007, 26728 (Turkish PILA) (5718 Sayılı Milletlerarası Özel Hukuk Ve Usul Hukuku Hakkında Kanun).

¹³ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I); <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008R0593>; *In the Rome I Regulation, the law applicable to insurance relations is determined by Article 7. Insurance contracts that fall within the scope of consumer transactions shall be resolved in accordance with Article 7, not Article 6 on consumer transactions. However, not all insurance relations are covered by this article and there are some cases that fall within the scope of Articles 3 and 4. The current status of the Rome I*

However, in the event that a foreign law is chosen in an insurance contract that does not involve a foreign element, it is accepted, although controversial in the doctrine, that this alone will not add a foreign element¹⁴.

2. The International Jurisdiction of Turkish Courts in Life Insurance

In a dispute arising out of a life insurance contract that is deemed to have a foreign element, the Turkish court shall first determine whether it has jurisdiction to hear the dispute. Each State determines the jurisdiction of its courts in disputes with a foreign element based on its own rules, regulates the international

Regulation has been criticized in foreign doctrine for its complexity, See also: Ulrich Magnus and Peter Mankowski, European Commentaries on Private International Law, Rome I Regulation, (2009), 110.; Xandra E Kramer, "The New European Conflict of Law Rules on Insurance Contracts in Rome I: A Complex Compromise," The Icfai University Journal of Insurance Law VI, no. 4 (2008): 23-41.; Berk Demirkol, Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanun'un 24. Maddesi Çerçevesinde Sözleşmeye Uygulanacak Hukuk, 2th ed. (2014), 360.

- ¹⁴ Özlem Burdurlu Ahlat, *Multimodal Taşıma Sözleşmesine Uygulanacak Hukuk* (2024), 147, 148.; Sibel Özel, Mustafa Erkan, Hatice Selin Pürselim and Hüseyin Akif Karaca, *Milletlerarası Özel Hukuk* (On İki Levha Yayıncılık, 2022), 11-12.; Gülin Güngör, *Temel Milletlerarası Özel Hukuk Metinlerinin Sözleşmeden Doğan Borç İlişkilerine Uygulanacak Hukuk Konusunda Yakınlık Yaklaşımı* (Yetkin Yayınları, 2007), 190; Hatice Özdemir Kocasakal, "Sözleşmelere Uygulanacak Hukukun MÖHUK m. 24 Çerçevesinde Tespiti ve Üçüncü Devletin Doğrudan Uygulanan Kuralları", *Public and Private International Law Bulletin (MHB)* 30, no. 1-2 (2008): 32-33.; Vahit Doğan, *Milletlerarası Özel Hukuk*, 8th ed., (Savaş Yayınevi, 2022), 7-8.; Rona Aybay and Esra Dardağan, *Uluslararası Düzeyde Yasaların Çatışması (Kanunlar İhtilafı)* (İstanbul Bilgi Üniversitesi Yayınları, 2008), 250.; *Contrary See also: Hatice Özdemir, "MÖHUK Kapsamına Giren Sözleşmelerin Tespiti Bağlamında 'Yabancılık Unsuru Taşıyan Sözleşme' ve 'Uluslararası Sözleşme' Kavramları," İstanbul Barosu Dergisi*, 73, no. 10-11-12 (1999): 926-941, 928.; Nomer, 324; Cemal Şanlı, Emre Esen and İnci Ataman Fıganmeşe, *Milletlerarası Özel Hukuk*, 10th ed., (2023), 336-337.; Aysel Çelikel, B. Bahadır Erdem, *Milletlerarası Özel Hukuk*, 17. ed., (Beta, 2021), 384.; Nuray Ekşi, "Yabancılık Unsuru Taşıyan Akitler ve Bu Akitlerin AT Roma Konvansiyonu'na Göre Anlamı", *Public and Private International Law Bulletin, (MHB)* 12, no. 1-2, (1992): 1-10, 7.; Arzu Alibaba, *Milletlerarası Unsurlu Sözleşmelerde Hukuk Seçimi ve Sınırlandırılması*, (PhD diss., Ankara University Social Sciences Insititute, (2005), 20.

jurisdiction of its courts ex officio and does not take into account the jurisdiction of other States¹⁵.

The international jurisdiction of Turkish courts in cases with a foreign element is regulated by the Law on Civil Procedure and various international conventions to which Turkey is a party¹⁶. Due to the way in which the rules of the Law on the international jurisdiction of Turkish courts are regulated, in determining whether there is a Turkish court with international jurisdiction in a dispute that has foreign element, it is necessary to first look at the special rules on international jurisdiction. In this context, it is necessary to make a distinction according to whether the transaction subject to the dispute is a consumer transaction or not. In any case, in the presence of a dispute that falls within the scope of the special jurisdiction rule, the general jurisdiction rule in the Law on Civil Procedure will not be considered¹⁷.

Brussel I Art. 4 rule establishes that the courts of the Member State where the defendant is domiciled have general jurisdiction¹⁸. The Brussels I bis Regulation also provides jurisdiction based on several rules: general jurisdiction (*against defendants in their domicile*), special jurisdiction for specific matters like contracts or torts, and protective jurisdiction for insurance, consumer, and employment contracts. It also includes exclusive jurisdiction for property, company matters, and intellectual property rights, and allows

¹⁵ Şanlı, Esen and Ataman Fıganmeşe, 459, 461.

¹⁶ Turkish PILA Art. 40: (1) *The international jurisdiction of the Turkish courts shall be determined by the domestic jurisdiction rules.*

¹⁷ Şanlı, Esen and Ataman Fıganmeşe, 467.; Ziya Akıncı, *Milletlerarası Özel Hukuk Ders Kitabı* (2020), 117,118.

¹⁸ Brussels I bis Art. 4: "1. *Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.* 2. *Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that Member State.*; Art. 5: 1. *Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.* 2. *In particular, the rules of national jurisdiction of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1) shall not be applicable as against the persons referred to in paragraph 1."*

choice of court agreements between parties. Additionally, mechanisms prevent abuse, like rules on *lis pendens*¹⁹ and *connected claims*. These provisions ensure predictability and fairness in cross-border disputes.

2.1. Jurisdiction in terms of Article 46 of the Turkish PILA

Pursuant to Article 46 of the Turkish PILA, in disputes arising out of an insurance contract, the court of the place where the insurer's principal place of business or the branch or agency of the insurer concluding the insurance contract is located in Turkey shall have jurisdiction. However, in cases against the insurer, the insured or the beneficiary, the court of their domicile or habitual residence in Turkey shall have jurisdiction. It is understood that this article is intended to protect the weaker party, namely the policyholder, insured or the beneficiary in jurisdiction.

According to this distinction, the lawsuits to be filed against the insured, the insurer or the beneficiary in life insurance that do not involve consumer transactions shall be filed in the courts of their domicile or habitual residence. On the other hand, the court of the place where the insurer's place of business or the branch or agency of the insurer that concluded the insurance contract is located is authorized for the lawsuits to be filed by them²⁰. In this perspective, if the insurer whose principal place of business is abroad signs the insurance contract in person, the international jurisdiction of Turkish courts will not arise²¹. On the other hand, it can be concluded that in the event of an action against the insured, the insurer or the beneficiary in a life insurance case, the international

¹⁹ In general, *lis pendens* means "Pending Lawsuit" or "Pending Litigation".

²⁰ Şanlı, Esen and Ataman Figanmeşe, 516.

²¹ Pursuant to the İstanbul Regional Court of Justice 45. H.D. E.2021/437 K. 2021-397 15.04.2021 judgment dated 31.12.2012, since the insurance contract must be concluded through the insurer's agency or branch office in Turkey for the establishment of jurisdiction pursuant to Article 46/2 of the Turkish PILA, the international jurisdiction of Turkish courts does not arise in the event that the insurer, whose principal place of business is abroad, signs the insurance contract in person.

jurisdiction of Turkish courts will not arise again if they do not have a domicile or habitual residence in Turkey.

Since the provision of Article 46 of the Turkish PILA is intended to protect the weaker party, this rule of law cannot be agreed otherwise by a jurisdiction agreement. The commercial activity of the policyholder, insurer or beneficiary, which is considered as the weak party here, does not require exclusion from the scope of protection. Therefore, jurisdiction agreements in insurance contracts concluded by companies and merchants also fall within the scope of the limitation in Article 47/2 of the Turkish PILA. Such a conclusion has been criticized in legal doctrine as incompatible with the realities of international commercial and economic life²².

The Turkish Court of Cassation, in an old judgment²³ on the subject, examined the issue under Article 31 of the previous Turkish PILA No. 2675²⁴ and stated that the rule of jurisdiction in Article 19 of the former Turkish Code of Civil Procedure²⁵ stipulates that in

²² Şanlı, Esen and Ataman Fıganmeşe, 516, cited as: “For detailed information on the international jurisdiction of Turkish courts in cases arising out of insurance contracts: Sema Çörtoğlu Koca, *Zayıf Tarafın Korunduğu Sözleşmelerde Mahkemelerin Milletlerarası Yetkisi*, (2016), 226 vd.; Cemile Demir Gökyayla, *Ticari Uyuşmazlıklarda Türk Mahkemelerinin Milletlerarası Yetkisi*, (2021), 290 vd. On the competence of Member State courts in insurance disputes under EU law see: Emre Esen, “Sigorta Uyuşmazlıklarında Üye Devlet Mahkemelerinin Yetkisi”, *Avrupa Birliği Devletler Özel Hukuku*, Eds. Işıl Özkan / Ceyda Süral / Uğur Tütüncübaşı, Ankara, 2016, s.100-134; Çörtoğlu Koca, 133 vd.”

²³ Court of Cassation (Yargıtay) 11. H.D. 1997/3609 E. 1997/5636 K., 19.6.1997.; Ekşi, *Sigorta*, 14.; Işıl Ulaş, *Uygulamalı Sigorta Hukuku Mal ve Sorumluluk Sigortaları*, 5. ed. (2006), 573-574.

²⁴ Act on International Private and Procedure Law, No: 2675 (obsolete), Official Gazette: 22.05.1982/17701 (2675 Sayılı Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanun (mülga)).

²⁵ Code Of Civil Procedure, No: 1086 (obsolete), Official Gazette: 2,3,4/7/1927, 622,623,624. (1086 Sayılı Hukuk Usulü Muhakemeleri Kanunu (mülga)), Art.19: “The lawsuit for compensation arising from the insurance contract may be filed in the place where the property is located if the insurance is related to real estate or real estate that is required to remain in a certain place, and in the place where the danger occurs if it is related to property that is not permanent due to its condition, and in the case of life insurance, even in the place where the residence of the insured person is located.

life insurance, a lawsuit may be filed even at the domicile of the insured person, and that the conditions imposed on the contrary in the insurance contracts shall be invalid.

The court stated that this regulation was made in order to protect the insured economically and for the purpose of public order. In cases where the jurisdiction of Turkish courts is determined according to public order under Article 31 of the Turkish PILA No. 2675, jurisdiction cannot be given to a foreign court with a jurisdiction agreement and the lawsuit can be filed in the Turkish court. Although the said decision was rendered under the former Turkish PILA No. 2675, this decision is considered important in terms of the determination of the foreign element of the insurance contract, since the criteria that give the foreign element are the same under both laws²⁶.

2.2. Jurisdiction in terms of Article 45 of the Turkish PILA

Article 45 of Turkish PILA introduces provisions to protect consumers, who are considered as the weaker party. Accordingly, in disputes arising out of consumer contracts as defined in Article 26 of Turkish PILA, the Turkish courts where the consumer's domicile or habitual residence or the other party's workplace, domicile or habitual residence is located shall be competent, according to the choice of the consumer. The competent court for the lawsuits to be filed against the consumer regarding the consumer contracts made pursuant to the first paragraph is the court of the consumer's habitual residence in Turkey²⁷. Similar to

Any conditions contrary to this article to be included in insurance contracts after the effective date of this law shall be null and void. This article shall not apply to marine insurance."

²⁶ Ekşi, Sigorta, 14, 15.

²⁷ Gülin Güngör, "Tüketicinin Mutad Meskeni Hukuku 'Düşünsel Temeller,'" *Ankara University Law Faculty Journal (Ankara Üniversitesi Hukuk Fakültesi Dergisi)* 2, no. 57 (June 2008): 115-133, 122: "Gülin Güngör stated that the law of the habitual residence of the consumer is the latest point reached today in the objective method of determining the law applicable to consumer contracts that have the purpose of protecting the consumer in private international law. She stated that the purpose of private international law to protect the consumer according to the law of the consumer's habitual residence is very strong and its functional binding effect is shown not only on

Article 46, a distinction has been made in this Article between lawsuits filed by the consumer and lawsuits filed against the consumer, taking into account that the consumer is the weaker party. According to this distinction, lawsuits against the consumer shall be filed in the consumer's habitual residence court. On the other hand, the courts of the consumer's domicile, habitual residence or the courts of the other party's workplace, domicile or habitual residence are authorized for the cases to be filed by the consumer in order to provide convenience to the consumer.

The consumer has the right of choice in terms of these courts authorized for the lawsuits to be filed by the consumer²⁸. In this case, the jurisdiction of the Turkish courts will almost invariably be established by the habitual residence or place of business. From the provision of the Article, it is understood that Turkish courts will not have jurisdiction in an action brought by a consumer only if neither party has any connection with Turkey. Turkish courts will have jurisdiction if the consumer's domicile or habitual residence is in Turkey or if the insurer's place of business, domicile or habitual residence is in Turkey.

However, the question arises as to whether Turkish courts will have jurisdiction in a lawsuit against a consumer whose habitual residence is outside Turkey, under Article 45 of Turkish PILA. This situation may arise especially when a foreigner is temporarily in Turkey and concludes an insurance contract with a Turkish insurance company. Since the foreigner will return to their domicile or habitual residence outside of Turkey for a short period of time, they will not have a habitual residence in Turkey as per Article 45 of the Turkish PILA. In this case, will the Turkish insurance company not be able to file a lawsuit against this person in Turkish courts? In my opinion, in this case, it should be accepted that the jurisdiction of the Turkish courts will not arise in parallel with the

the law governing the substance of the consumer contract but also on the law governing the form of the consumer contract."

²⁸ Şanlı, Esen and Ataman Figanmeşe, 514.

decision of Istanbul Regional Court of Appeal 45th Civil Chamber E.2021/437 K. 2021-397 dated 15.04.2021.

However, it is also stated in the doctrine that the scope of application of Article 45 of the Turkish PILA, which governs the international jurisdiction of Turkish courts in consumer contracts with a foreign element, is not clearly defined and the international jurisdiction of Turkish courts in disputes arising from insurance contracts with a foreign element should be determined in accordance with Article 46 of the Turkish PILA²⁹.

For life insurance that is considered as consumer transactions, the jurisdiction of the courts authorized in the jurisdiction rule cannot be eliminated by a jurisdiction agreement (Article 47/2 of Turkish PILA³⁰). Within the scope of these explanations, the jurisdiction rule regulated under Article 45 of Turkish PILA is in the nature of a limited exclusive jurisdiction rule for the purpose of consumer protection, and the recognition and enforcement of a decision obtained from a foreign court in violation of this rule will not be possible in Turkey³¹.

3. Life Insurance Jurisdiction in the EU

In the EU regulations, different rules have been adopted on different dates regarding the substance, form and jurisdiction according to various possibilities. The regulations in EU are not like

²⁹ Zeynep Derya Tarman, "Milletlerarası Özel Hukukta Tüketicinin Korunması," *Public and Private International Law Bulletin*, (MHB) 39, no. 1 (2019): 325–356, 345.

³⁰ Turkish PILA Art 47: "(1) Except in cases where the jurisdiction of a court is determined according to exclusive jurisdiction of specific court principles, the parties may agree on jurisdiction of a court of foreign state in a dispute that contains a foreign element and arises from obligatory relations. The agreement is invalid unless it is proved by written evidence. The competent Turkish court shall have jurisdiction only if the foreign court decides that it has no jurisdiction or if a plea as to jurisdiction is not presented in Turkish courts. (2) The competency of courts specified in articles 44, 45, 46 cannot be removed by the parties' agreement."

³¹ Şanlı, Esen and Ataman Fıganmeşe, 515.; Contrary: Zeynep Derya Tarman stated that the judgment of a foreign court should not be subject to the barrier of exclusive jurisdiction and should be recognized and enforced if it meets the general conditions for recognition and enforcement. See also: Tarman, 353.

a single code such as the Turkish PILA³². While the Rome I Regulation contains provisions on the law applicable to the substance of insurance contracts,³³ the Brussels I bis Regulation applies to jurisdiction. Brussels I³⁴, adopted in 2001 and revised in 2012 as Brussels I bis, contains provisions on jurisdiction in civil and commercial matters as well as the recognition and enforcement of judgments.

Brussels I bis Regulation No. 1215/2012, was adopted on 12 December 2012, entered into force on 9 January 2013, and started to apply from 10 January 2015 onwards³⁵. This regulation introduced important amendments in order to increase the effectiveness of jurisdiction agreements and also aimed to harmonize the Brussels I bis Regulation with the La Haye Convention on Jurisdiction Agreements. To this end, the requirement that at least one of the parties to a jurisdiction agreement must be domiciled in a Member

³² For detailed information: Xandra Kramer, Mr Michiel de Rooij, Vesna Lazic, Richard Blauhoff and Lisette Frohn, *A European Framework for private international law: current gaps and future perspectives* (2012), <https://www.europarl.europa.eu/document/activities/cont/201212/20121219A TT58300/20121219ATT58300EN.pdf>; Ralf Christian Michaels, Jürgen Basedow and Wolfgang Wurmnest, "Max Planck Institute for Comparative and International Private Law: Comments on the European Commission's Proposal for a Regulation of the European Parliament and the Council on the law applicable to contractual obligations (Rome I)," *The Rabel Journal of Comparative and International Private Law (RabelsZ)* 71, (April 2007): 225-344, 277.

³³ *International private insurance law is largely unified at EU level, and insurance-specific rules apply in determining jurisdiction whenever the defendant is domiciled in a Member State within the meaning of the Regulation.*, Antonio Leandro and Helmut Heiss, *Insurance contracts, Encyclopedia of Private International Law* (2017), 956.

³⁴ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001R0044>.

³⁵ Nathy Rass-Masson, Virginie Rouas, Marco Paron Trivellato and Laura Vona, *Study to support the preparation of a report on the application of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Ia Regulation)*, EU Publications, 2023, <https://op.europa.eu/en/publication-detail/-/publication/4e4370d0-cead-11ed-a05c-01aa75ed71a1>.

State for the Brussels I bis Regulation to apply has been abolished. It is also provided that the law of the court or courts of the chosen Member State, including its conflict of laws rules, shall apply to the substantive validity of the jurisdiction agreement³⁶.

Explanation 18 of the preamble of the Brussels I bis states that in relation to insurance, consumer and employment contracts, the weaker party should be protected by jurisdictional rules that are more favorable to their interests than general rules³⁷.

Section 3 of Brussels Ibis (Articles 10-16) contains rules dealing specifically with matters relating to insurance. This section's regulatory aim is to protect the policyholder, the insured, the beneficiary and the injured party, by means of rules on jurisdiction more favorable to their interests than the general rules. These provisions are meant to enable policyholders to efficiently participate in the internal market since the protection of the weaker party helps the proper functioning of the internal market³⁸.

In its aim to protect the weaker party, Section 3 is in principle in line with Section 4 (consumer contracts) and Section 5 (contracts of employment). So, the protection provided to the policyholder exceeds the general level of consumer protection which differs from Turkish law. Since as explained earlier, in Turkish Law, consumer insurance jurisdictions are also covered under consumer jurisdiction laws.

According to Brussel I bis, only insurance companies or other professionals in the insurance sector, such as businesses claiming recovery from insurance undertakings as assignees, are completely

³⁶ Zeynep Özgenç, "Validity of Jurisdiction Agreements Under Brussel I Bis Regulation," *Public and Private International Law Bulletin (MHB)*, 37, no. 2, (2017): 641–669, 641.

³⁷ (19) *The autonomy of the parties to a contract, other than an insurance, for employment contract, where only limited autonomy to determine the courts having jurisdiction is allowed, should be respected subject to the exclusive grounds of jurisdiction laid down in this Regulation.*

³⁸ Ulrich Magnus and Peter Mankowski (editors), *European Commentaries on Private International Law ECPII Commentary Volume I, Brussels Ibis Regulation* (2023), 395.

exempted from the protection provided under Section 3. Policyholders taking out insurance for large risks are protected under Section 3. They may, however, enter freely into agreements on jurisdiction³⁹.

In Section 4 of Brussel I bis, in most cases, affords protection to a consumer only if they act as a passive consumer⁴⁰, policyholders are protected regardless of whether they stay passive or actively shop for insurance cover abroad. In substance, Section 3 provides the policyholder with a range of jurisdictions in which they may bring an action according to their choice, whereas such choice is limited for the insurer. Above all, the rules on jurisdiction are mostly mandatory. Parties may not deviate from the rules on jurisdiction to the detriment of the policyholder⁴¹.

The Brussels I bis provides that jurisdiction in insurance matters shall be determined by Article 11 et seq. without prejudice to Article 6 and paragraph 5 of Article 7. Article 11 determines the jurisdiction of an insurer domiciled in a Member State. The insurer domiciled in a Member State may be sued in the courts of the Member State in which he is domiciled; in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the claimant is domiciled; or if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer. Also, an insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

³⁹ Magnus and Mankowski, *Brussels*, 396.

⁴⁰ *Passive consumer in this context means that the consumer is not the initiator of the international contract. The counterpart to the passive consumer is the active consumer, who takes the initiative to enter the international market, for example by travelling to a foreign country in order to conclude a contract with a foreign trader, See also: Thomas Thiede, Judith Schacherreiter, "The Recent Shift from the Passive to the Active Consumer," Austrian Law Journal, 1 (2015): 23–31, <http://ali.uni-graz.at/index.php/ali/article/view/34>, 27, 28.*

⁴¹ Magnus and Mankowski, *Brussels*, 396.

3.1. How the CJEU Interprets the Rules

3.1.1. Protective Jurisdiction for Weaker Parties

The Court of Justice of the European Union (CJEU) has provided important clarifications regarding the application of jurisdictional rules under the Brussels I bis Regulation in matters relating to insurance contracts. These rulings emphasize the Regulation's goal of protecting weaker parties while also delineating the boundaries of such protections.

The Brussels I bis Regulation ensures that policyholders, insured individuals, and beneficiaries—considered weaker parties—have access to jurisdictions that favor their position in disputes. In **C-340/16 (MMA IARD)**⁴², the Court reaffirmed this principle by allowing an employer, who paid an employee's salary during an accident-induced absence, to sue an insurer for civil liability. The CJEU held that such claims align with the protective purpose of the Regulation's jurisdiction rules. Similarly, the ruling in **C-708/20 (Seguros Catalana Occidente)**⁴³ reinforced the right of the injured party to sue the insurer directly in their domicile state. However, the Court clarified that this protective measure does not permit the injured party to simultaneously sue the policyholder domiciled in another Member State. This decision highlights the limits of these protective provisions and ensures that jurisdictional fairness applies to all parties involved.

Certain rulings have clarified that the special protections afforded under Section 3 of the Brussels I bis Regulation are not absolute. In **C-393/20 (T.B. y D.)**⁴⁴, the Court ruled that insurance professionals are excluded from the special jurisdictional protections, as they are not considered weaker parties in the legal sense. This reinforces the idea that the Regulation's protections are

⁴² Rass-Masson, Rouas, Trivellato and Vona, *Brussels Ia Regulation*, 147: "Judgment of 20 July 2017, *Landeskrankenanstalten-Betriebsgesellschaft — KABEG v Mutuelles du Mans assurances — MMA IARD SA*, C-340/16, EU:C:2017:576."

⁴³ Rass-Masson, Rouas, Trivellato and Vona, *Brussels Ia Regulation*, 147: "Judgment of 09 December 2021, *BT v. Seguros Catalana Occidente*, C-708/20, EU:C:2021:986."

⁴⁴ Rass-Masson, Rouas, Trivellato and Vona, *Brussels Ia Regulation*, 147: "Judgment of 21 October 2021, *T. B., D. sp. z o.o. v G. I. A/S*, C-393/20, EU:C:2021:871."

tailored specifically for individuals without professional or legal expertise in insurance.

In another key decision, **C-913/19 (CNP)**⁴⁵, the CJEU excluded businesses that acquire claims from weaker parties from these protective jurisdictional rules. Instead, such professional assignees are subject to the general jurisdiction provisions, ensuring that the original purpose of protecting weaker parties is maintained. Also in **C-106/17 (Paweł Hofsoe)**⁴⁶, the Court ruled that a claim recovery agent acting on behalf of an injured party could not file a civil liability action directly against the insurer before the court of the injured party's domicile. The Court explained that such a claim recovery agent—who acts as a professional intermediary between the injured party and the insurer—is excluded from the protection afforded by the Regulation to "weaker parties." The CJEU emphasized that the rules governing direct actions are meant to shield those without the expertise or bargaining power to take independent action, such as consumers and beneficiaries in the case of life insurance claims.

This ruling introduces a **narrower interpretation of the Brussels I bis Regulation**, underscoring that only those with a **direct stake in the insurance dispute** and who qualify as "weaker parties" can take advantage of the more favorable jurisdiction rules. It serves to clarify that professional intermediaries, such as claim recovery agents, cannot rely on jurisdictional provisions designed specifically for individuals who are legally vulnerable in insurance disputes.

⁴⁵ Rass-Masson, Rouas, Trivellato and Vona, *Brussels Ia Regulation*, 147: "Judgment of 20 May 2021, *CNP spółka z ograniczoną odpowiedzialnością v Gefion Insurance A/S*, C-913/19, EU:C:2021:399."

⁴⁶ Rass-Masson, Rouas, Trivellato and Vona, *Brussels Ia Regulation*, 146: "Judgment of 31 January 2018, *Paweł Hofsoe v LVM Landwirtschaftlicher Versicherungsverein Münster AG*, C-106/17, EU:C:2018:50."

3.1.2. Restrictions on Jurisdiction Clauses

The protective framework also extends to jurisdiction agreements. In **C-803/18 (Balta)**⁴⁷, the CJEU ruled that a jurisdiction clause within a large-risk insurance contract could not bind a party that had not explicitly consented to it, especially when that party was not an insurance professional. This decision reaffirms the protective stance of the Brussels I bis Regulation by ensuring that jurisdiction clauses do not unfairly disadvantage weaker parties.

3.1.3. Relevance for Turkish Law

The CJEU's interpretation of jurisdictional protections for weaker parties serves as a robust comparative framework for Turkish private international law. While Turkish law under Articles 45 and 46 of the PILA similarly seeks to safeguard weaker parties, it lacks the granularity provided by the Brussels I bis Regulation. For example, EU rules explicitly differentiate between professional parties and consumers, and clearly limit the application of jurisdictional clauses that disadvantage the latter. Adopting such distinctions could enhance the predictability and fairness of Turkish legal provisions.

4. Comparative Interpretation of Turkish PILA and Brussels I Regulations

The important considerations in framing rules of jurisdiction are fairness to the claimant and defendant, and respect for the rights of other countries. The claimant must be given the opportunity to bring their claim to a reasonable court. Otherwise, the party would be denied the right to have their claim heard. On the other hand, the defendant must not be forced to defend the claim in an unreasonable court. In addition, if a court in another country can legitimately claim that it has a prior right to hear the case, that too must be taken into account. To balance these different considerations, it is usually done by weighing up the connections or

⁴⁷ Rass-Masson, Rouas, Trivellato and Vona, *Brussels Ia Regulation*, 147: "Judgment of 27 February 2020, AAS 'Balta' v UAB 'Grifs AG', C-803/18, EU:C:2020:123."

links between the forum and the defendant (sometimes also the claimant)⁴⁸.

Turkish regulations emphasize protecting the weaker party in life insurance contracts via Turkish PILA Articles 45-46. However, it can be said that these provisions limit the validity of jurisdiction agreements that could disadvantage insured parties, policyholders, or beneficiaries. The protective intent aligns with consumer-centric policies, ensuring that weaker parties are not subject to undue hardships or unfair legal processes. Similarly, the Brussels I bis Regulation also provides protection for weaker parties, including consumers, policyholders and beneficiaries. Section 3 of the Regulation outlines specific rules for insurance matters, designed to offer a more favorable jurisdictional framework for weaker parties. It even extends protections to policyholders engaging in "large-risk" insurance contracts, while excluding professionals and insurers from these protections.

Both systems aim to protect weaker parties, but EU regulations are more explicit and detailed in addressing various scenarios, including distinctions between consumer insurance and large-risk contracts. Turkish law provides a general framework but lacks the same level of specificity. But it can also be argued that EU regulations might be a bit too detailed and causes confusion which also criticized in the doctrine⁴⁹.

Turkish law does not allow jurisdiction agreements to override the provisions when weaker parties are involved, preserving their rights. While Turkish law adopts a protective stance, EU law offers a more comprehensive and harmonized approach, with a greater emphasis on predictability and accessibility for the weaker party. The Brussels I bis Regulation also integrates consumer-friendly jurisdiction rules with broader provisions for insurance disputes,

⁴⁸ Trevor C. Hartley, "Basic Principles Of Jurisdiction In Private International Law: The European Union, The United States And England," *International and Comparative Law Quarterly (ICLQ)* 71, (January 2022): 211–226, 213.

⁴⁹ Ulrich Magnus and Peter Mankowski, *European Commentaries on Private International Law, Rome I Regulation* (2009), 110.; Kramer, *Insurance Contracts in Rome I*, 23, 41.

ensuring consistency. Also, Turkish law does not differentiate between different types of insurance contracts in terms of jurisdiction, except for consumer transactions. It should be noted that Turkish courts offer jurisdictional options based on the domicile or habitual residence of the consumer or the insurer's place of business. However, these rules may not provide the same breadth of choice for the policyholder as EU regulations.

While both Turkish and EU regulations share the goal of protecting weaker parties in insurance contracts, the EU's Brussels I bis Regulation offers a more detailed and harmonized approach to jurisdiction. Turkish law demonstrates strong consumer protection principles but could benefit from aligning with EU practices, particularly in areas such as large-risk contracts, cross-border cooperation, and clearer jurisdictional frameworks. By incorporating these elements, Turkish private international law could better address the complexities of an increasingly globalized insurance market.

Conclusion

In conclusion, there are many special contracts and types of legal relations under private international law which has the need for protection of the weaker party. The jurisdictional framework governing life insurance contracts under private international law reflects the intricate interplay between consumer protection principles and the complexities of cross-border legal systems. Turkish law provides a distinctive approach by emphasizing the protection of the weaker party, such as policyholders and beneficiaries, through specific jurisdictional rules. Articles 45 and 46 of the Turkish PILA shows this protective intent by restricting jurisdictional agreements that might undermine the rights of individuals perceived as less powerful in the contractual relationship. However, these provisions also raise interpretative challenges, particularly in scenarios involving foreign elements, such as when neither party has a substantial connection to Turkey.

The comparison with the European Union's legal framework, particularly the Brussels I bis Regulation, reveals a more comprehensive and harmonized approach to jurisdictional issues.

The EU's framework not only ensures equitable access to justice for weaker parties but also aligns jurisdictional rules with the realities of an increasingly interconnected market. By providing clear and mandatory jurisdictional rules that prioritize the interests of consumers and policyholders, the EU creates a robust mechanism for addressing disputes in cross-border insurance relationships.

While Turkish law demonstrates a solid foundation, certain gaps remain, particularly in defining the scope of consumer protection in insurance contracts and reconciling the rules for general and consumer contracts under private international law. Addressing these gaps could involve refining the definitions and expanding the jurisdictional protections in line with international standards. For example, adopting elements of the EU's framework, such as clearer distinctions between large-risk and consumer insurance contracts, could enhance the predictability and fairness of jurisdictional outcomes.

Ultimately, the global nature of insurance markets demands legal frameworks that balance national sovereignty with international coherence. For Turkish law, this means not only protecting weaker parties within its jurisdiction but also adapting to the dynamic demands of cross-border insurance transactions. Through continued refinement and alignment with international best practices, Turkish private international law can ensure both the equitable treatment of all parties and the competitiveness of its legal and insurance markets on the global stage.

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