

IMPOSSIBILITY IN TURKISH LAW

İpek YÜCER*

GENEL OLARAK İMKANSIZLIK

Özet

İnsanlar gerek günlük yaşantılarında gerekse iş hayatlarında her gün çeşitli gereksinimlerle karşılaşır. Bu gereksinimler ancak başkaları ile borç ilişkileri, özellikle de sözleşmeler kurmak suretiyle giderilebilir. Sözleşmeler, taraflar arasında borç ilişkisi doğuran, tarafların birbirlerine uygun ve karşılıklı irade beyanları ile kurulan hukuki işlemlerdir. Sözleşmelerin konusu ve kuruluş amacı, kişilerin gereksinimlerine yönelik edimlerdir. Türk Borçlar Hukukuna göre, kişiler sözleşme yapıp yapmamakta, sözleşme taraflarını seçmekte ve sözleşme konusu edimleri belirlemede serbesttirler. Buna sözleşme özgürlüğü ilkesi denir. Ancak, bazı hallerde bu ilke sınırlanmaktadır. Bu sınırlamalardan birini de “imkansızlık” oluşturmaktadır.

İmkansızlık, borçlanılan edim yükümünün ya bastan itibaren geçerli olarak doğmasını ya da sonradan borçlu veya diğer herhangi bir kimse tarafından objektif, sürekli ve kesin olarak yerine getirilmesini önleyen fiili veya hukuki engeller olarak tanımlanabilir.

Makalemizin konusunu edimin, sözleşmenin kurulmasından önce veya en geç kurulduğu sırada mevcut objektif, sürekli, fiili veya hukuki bir engel sebebiyle, borçlu da dahil hiç kimse tarafından ifa edilememesi olarak tanımlanan, başlangıçtaki imkansızlık oluşturmaktadır.

Başlangıçtaki imkansızlık, doktrindeki hakim görüşe göre, edimin borçlu da dahil üçüncü kişiler tarafından ifa edilip edilememesi ölçüsü esas alınır, başlangıçtaki objektif imkansızlık, başlangıçtaki sübjektif imkansızlık şeklinde ikiye ayrılarak incelenmektedir. Bu iki tür başlangıçtaki imkansızlık haline farklı hukuki sonuçlar bağlanmaktadır.

İnsanların gereksinimlerini karşılama aracı olan sözleşmelerin geçersiz olmasına neden olan başlangıçtaki imkansızlık, bu yönüyle borç ilişkilerinde büyük bir öneme sahiptir.

Anahtar Kelimeler: imkansızlık, başlangıçtaki imkansızlık, sübjektif imkansızlık, sözleşme

* Research Assistant (Department of Civil Law) at Başkent University Faculty of Law.

IMPOSSIBILITY IN TURKISH LAW

Abstract

The human beings have to face various needs both in their daily lives and in their professional lives everyday. These needs can be overcome by debt relations with others, especially by establishing contracts. The contracts are legal transactions which create debt relations between the parties by the declaration of mutual agreement and consent. The subjects and objects of the contracts are the activities to meet the parties' needs. According to the Turkish Code of Obligations, the parties are free in signing a contract; choosing the contracting party and determining the subjects of the contract. This is called the Principle of Freedom for Contracts. However, in some cases, this principle is limited. One of such limitations is the "impossibility".

Key Words: *impossibility, initial impossibility, subjective impossibility, contract*

INTRODUCTION

Impossibility may be defined as the actual or legal restrictions that do not allow the debtor or another person to repay the debt in an objective, continuous and definite way from the beginning on.

The subject of our article is the impossibility, which is defined as the failure in the action by anybody, including the debtor, and before or latest during the establishment of the contract due to existing objective, continuous, actual or legal hindrance.

According to the dominant opinion in this doctrine, the initial impossibility is examined under two subtitles: the initial objective impossibility and the initial subjective impossibility in regard to the criteria whether the action can be realised or not realised by the third persons, including the debtor. There are different legal results of these two types of initial impossibility.

In this regard, the initial impossibility, causing the invalidity of the contract which is a tool for meeting the requirements of the people, has a great importance in debt relations.

Within the frameworks of these explanations; our article consists of one introduction, four sections and one conclusion. In the Introduction of our thesis, the concept of impossibility; in the first section, the concept of impossibility; in the second section, the views about impossibility; in the third

section, differences between impossibility and similar concepts and in the fourth section; the role of impossibility has been discussed. In the conclusion section, we have emphasized the points which we found important during our research.

1. THE CONCEPT OF IMPOSSIBILITY

The contracts are the types of legal relationships, which supply the legal relationships that they want with their declaration of intention. The contracts are the instrument of the principle of liberty of contracts. The acts of contracts appertain the parts of contract's declaration of intention in the limits of legal rules. This is called "liberty of contracts"¹. But in many situations, this liberty can be limited. The one of the this limitation is "impossibility".

Turkish law of obligations and Turkish civil code regulate this concept in their many provision but they don't describe it. When we analyse Turkish law of obligations, we can see that it gives way to this concept in their provisions of 20, 96 and 117.

"Impossibility" composes the one of the reason of the performance barriers. Actually, impossibility is a performance barrier which is continual, permanent and basic. For this characteristic, impossibility contrasts with default. The importance of impossibility arises in not to bring the debtor for specific performance².

The legislator doesn't describe the impossibility and lets the definition of impossibility to the jurisprudence. In the jurisprudence, the impossibility is described in different definitions.

One vision³, describes the impossibility as the continuous impossibility in specific performance by the debtor without affecting the performance. On the other hand, the other vision⁴ which we also adhere, describes the

¹ Eren, Fikret: *Borçlar Hukuku Genel Hükümler*, 8. Bası, İstanbul 2003, s. 270.; Tekinay/Akman/Burcuoğlu/Altop: *Borçlar Hukuku Genel Hükümler*, 6. Bası, İstanbul 1988, s. 483.; Schwarz, Andreas B.: *Borçlar Hukuku Dersleri*, Çeviren: Davran, Bülent, I.Cilt, İstanbul 1948, s. 326.

² Serozan, Rona: *İfa, İfa Engelleri, Haksız Zenginleşme*, 3.Cilt, 4.Bası, İstanbul 2006, s. 163.

³ Serozan, İfa Engelleri, s. 163.

⁴ Eren, s. 295.; Tekinay/Akman/Burcuoğlu/Altop, s. 542.; İnan, Ali Naim: *Borçlar Hukuku Genel Hükümler*, Ankara 1984, s. 503.; Ayan, Mehmet: *Borçlar Hukuku Genel Hükümler*, 3. Bası, Konya 2002, s. 325.; Akıntürk, Turgut: *Satım Akdinde Hasarın İntikali*, Ankara 1966, s. 33.; Velidedeoglu, Veldet/ Özdemir, Refet: *Borçlar Kanunu Serhi*, Ankara 1987, s. 52.; Oguzman, Kemal/ Öz, Turgut: *Borçlar Hukuku Genel Hükümler*, İstanbul 2005, s. 77.

impossibility as, the actual and legal barriers which counteract the performance with objective, continual and absolute ways by the debtor or another one in the begining or afterwards or counteract to arise the valid act.

Impossibility can contain one or more performance. Also, the impossibility of the performance of act can be discussed in secondary acts. Actually, impossibility related to product of acts. But sometimes impossibility can be discussed in effect of acts⁵.

Impossibility actually, discusses morsel debts, close breed debts and clannish acts⁶. Impossibility can be discussed in lesser acts. For example, according to Code of Construction, there is a limitation about the height of buildings. If someone engages to create a building with against the Building Code, in this relation the debt can't occur. Because, this causes initial impossibility⁷. But the existing of the acts can't be impossible in money debts and in spesific obligations⁸.

It can be said that; impossibility occurs because of the non active acts. But, in this situation the question is when the acts become impossible. This question's answer is answered by two views.

2. THE VIEWS ABOUT IMPOSSIBILITY

A. LOGICAL (PHILOSOPHICAL) IMPOSSIBILITY VISION

According to this views supporters, impossibility can be discussed only when the act can't be exercised because of the logical rules. In other words, the acts which are impossible because of the logical rules, have to be deemed impossible, too. In these situations, exercising the act is impossible for everyone⁹. For example; a commitment about a machine which haven't been invented yet, is a logical impossibility¹⁰.

⁵ Altunkaya, Mehmet: Edimin Baslangıctaki İmkansızlığı, Ankara 2005, s. 90.

⁶ Altas, Hüseyin: Eserin Teslimden Önce Telef Olması, Ankara 2003, s. 185.

⁷ Turkish Supreme Court of Appeals HGK, 27.02.1985 T., 15-74 E., 254 K.: " The act, which is agreed between sides, is impossible. Because of according to the Regulation about Disaster Affairs, building a five storeys structure, which is the subject of the act, is impossible. For this reason the building contract is invalid."

⁸ K.Altas, Eser, s. 195.; Altunkaya, s. 90.; Gauch, Peter: Werkvertrag, 4. Auf., Zürich 1996, s. 145. Bu yazar için bkz., Altunkaya, s. 13.

⁹ Başpınar, Veysel: Borç Sözleşmelerinin Kısmi Butlanı, Ankara 1998, s. 112.; Brox: Allgemeines Schuldrecht, München 1969, s. 224.; Larenz: Lehrbuch des Schuldrechts, I.Band, allgemeiner Teil, vierte durchgesehene Auflage, München 1968, s. 249. Bu yazarlar için bkz. Dural, Mustafa: Borçlunun Sorumlu Olmadığı Sonraki İmkansızlık, İstanbul 1976, s. 9.

¹⁰ Başpınar, s. 112.

Impossibility In Turkish Law

Logical impossibility doesn't always consist of the logical rules. An act which is possible in logical rules is impossible in application. For that reason, impossibility doesn't only consist of the logical rules but also consists of application¹¹.

On the other hand, sometimes a legal rule can prevent the act although the logical rules allow this. In these situations, legal impossibility in specific meaning occurs¹². For example, a legal rule that regulates an area which is forbidden to be built causes the legal impossibility. In fact Turkish Supreme Court of Appeals have some decisions about that¹³.

Legal impossibility in specific meaning can be caused by on act that against the law and morality or government actions or expropriation, too¹⁴.

It is polemical in jurisprudence that when there is a ban about importation or debarkment, why the contract disables, because of legal impossibility or contradiction to law. For some authors, in this situation there is a legal impossibility. Because this act is possible in logical rules¹⁵. On the other hand the other authors believe that these acts are not appropriate because of the contradiction to law. Because, in this situation there is a forbidden legal rule which bars the exercising¹⁶. Despite the forbidden legal rule, if someone exercises the act, the legal rule is disturbed and this cause the contradiction to law. If this condition is evaluated in the provisions that regulate the impossibility, the nullity which applicates the contract rescues the parties to the liability, despite the forbidden rule.

The other argument is about the existence of legal impossibility. According to some authors, there musn't be a concept like legal impossibility.

¹¹ Dural, Mustafa: İmkansızlık Kavramı ve Türleri, (BATİDER, 7.Cilt, 1.Sayı, Ankara 1973, s. 13-57), s. 14.

¹² Dural, Sonraki İmkansızlık, s. 10.

¹³ Turkish Supreme Court of Appeals 15.HD, 29.06.1977 T., 971 E., 1438 K.: “ The sides agreed an act about after getting domes' experiences in Turkey, to prepare the building Project in the contract. But, because of getting domes' experiences in Turkey is impossible, the contract is invalid.”

¹⁴ Dural, Sonraki İmkansızlık, s. 12.

¹⁵ Dural, Sonraki İmkansızlık, s. 23.

¹⁶ Baspınar, s. 114.; Von Tuhr, Andreas: Borçlar Hukuku Umumi Kısmı, Çeviren: Edege, Cevat, Cilt: 1-2, Ankara 1983, s. 262.; Akyol, Sener: Borçlar Hukuku Genel Hükümler I, İstanbul 1995, s. 15.

Because if an act is impossible, the reason is always a logical rule¹⁷. But the other authors find that if the government bars an act with a regulation or a rule, this condition has to be named legal impossibility¹⁸.

B. LEGAL IMPOSSIBILITY VISION

If an act can't be exercised by anyone, because of the imperious legal rule, legal impossibility is discussed¹⁹. For example, the parties can't make a contract about a real right which is not regulated in law. Because there is a principle which orders the limitation (numerous clauses) of real rights in Turkish Civil Law. So, if the parties agree on like a this act, the contract is null because of the legal impossibility²⁰.

When a legal rule bans an act, the act becomes impossible in practice, too.

The subject of the contradiction to law and ethics that arise afterwards to cause impossibility, is arguable in jurisprudence²¹.

In our opinion, like the impossibility which arises before the contract, if a legal rule comes into effect after contract is made, the legal impossibility occurs, too²². For example, if a builder can't exercise his or her act because of the amendment in Code of Constuction, the exercise of the contract is impossible²³.

¹⁷ Kleineidam: Unmöglichkeit und Unvermögen nach dem Bürgerlichen Gesetzbuch für das deutsche Recht, Jena 1900, s. 14-16., Lehmann: Die Unterlassungspflicht im bürgerlichen Recht, in Abhandlungen zum Privat und Zivilrecht des deutschen Reichs, herausgegeben von Otto Fischer, 15.Band, 1.Heft, München 1906, s. 252. Bu yazarlar için bkz. Dural, Sonraki İmkansızlık, s. 13.

¹⁸ Kornfeld: Leistungsunmöglichkeit, eine zivilrechtliche Studie unter besonderer Berücksichtigung des österreichischen Rechts, Wien 1913., s. 12. Bu yazarlar için bkz.Dural, Sonraki İmkansızlık, s. 15.

¹⁹ Eren, s. 297.; Baspınar, s. 113.; Dural, Sonraki İmkansızlık, s. 17.; Altunkaya, s. 95.; Altas, Hüseyin: Borçlunun Sorumlu Olmadığı Sonraki İmkansızlık, (Yayımlanmamış Yüksek Lisans Tezi), Ankara 1991, s. 9.; İnan, Ali Naim: Die Unmöglichkeit der Leistung im deutschen, schweizerischen und türkischen recht, Freiburg 1956, s. 3.; Medicus, Dieter: Schuldrecht I.Allgemeiner Teil, 9.Auf., München 1996, s. 367. Bu yazarlar için bkz. Altunkaya, s. 95.

²⁰ Altunkaya, s. 96.

²¹ Dural, Sonraki İmkansızlık, s. 23.

²² Altunkaya, s. 96.; Dural, Sonraki İmkansızlık, s. 23.; Eren, s. 996.

²³ Altunkaya, s. 97.; Oguzman, Kemal / Öz, Turgut, s. 77.

Impossibility In Turkish Law

Also, if a legal rule is changed after making the contract about an act that is impossible in law in the beginning of the legal relationship, the legal impossibility continues its effect²⁴.

For the legal impossibility, the act can't be exercised by anyone. The temporary bars don't create the legal impossibility²⁵.

When we analyse two visions about the impossibility, we can say that, impossibility not only deals with the creation of application, but also has to deal with existing legal rules. In fact, if the impossibility is analysed only with practises or legal rules, its scope is became get narrow²⁶.

3. THE DIFFERENCES BETWEEN IMPOSSIBILITY AND THE SIMILAR CONCEPTS

Sometimes, exercising the act is impossible for the reason of demander or debtor or contract. But these cases musn't be evaluated in the concept of impossibility. For that reason, these concepts have to be discriminated from the concept of impossibility²⁷.

A. IMPOSSIBILITY AND IMPRACTISIBILITY

First of all, the concept of impossibility is different from the concept of exceeding difficulty of exercising. In the exceeding difficulty of exercising, the exercising of act is possible, but it is hard for the debtor's economic situation²⁸. In other words, the exceeding difficulty of exercising the circumstances in the period of making the contract is different from the circumstances that in the period of exercising the act. For example, when exercising a leasing agreement which is made with foreign money can so hard for the debtor, because of the reason of inflation or devaluation. In these case the exceeding difficulty of exercising occurs²⁹.

²⁴ Turkish Supreme Court of Appeals 13.HD, 05.06.1987 T., 3145 E., 3346 K.: " The act of contract, which is about sale of property, is impossible because of the building code at the contract date. But, amendmending the building code can't effect this invalidity."

²⁵ Altunkaya, s. 97.; Tunçomag, Kenan: Borçlar Hukuku, 1. Cilt, 4. Bası, İstanbul 1976, s. 469.

²⁶ Eren, s. 295.; Altas, Eser, s. 186.; Bucher, Eugen: Schweizerisches Obligationenrecht, Allgemeiner Teil ohne Delictrecht, Zürich 1988, s. 417. Bu yazar için bkz. Altunkaya, s. 100.

²⁷ Eren, s. 297.; Dural, Sonraki İmkansızlık, s. 26.; Reisoglu, s. 355.

²⁸ Oguzman/ Öz, s. 449.; Altunkaya, s. 146.

²⁹ Turkish Supreme Court of Appeals HGK, 15.10.2003 T., 13-559 E., 559 K.

As a result these concepts are different from each other. Because, if a case of exceeding difficulty of exercising is applied the provisions of impossibility, the debtor is rescued from his or her debt. But for the debtor, it can be more important to exercising his or her debt³⁰. Also, in the exceeding difficulty of exercising the exercising of act is possible, but in impossibility it is impossible for anyone³¹.

According to current general opinion, the problem of necessity of provisions in the exceeding difficulty of exercising is analysed with the principles of integrity rule and abusing the right rule³².

B. IMPOSSIBILITY AND ADAPTATION OF CONTRACT

In the Contract Law, the main principle of “pacta sunt servanda” prevails. According to this principle, although the conditions change, the parties have to exercise their acts³³. But, in spite of this principle, the conditions affect one of the party’s interests, the base of operation crumbles³⁴. In other words, if the facts that form the base of operation changes in fundemantel form, the base of operation crumbles³⁵. In these situations, we wait for the debtor to exercise the act against the integrity rule. For that reason, the adaptation of contract is accepted³⁶. Consequently, the contract adapts to new conditions, it is called “adaptation of contract”.

The concept of adaptation of contract and the concept of impossibility are different from each other. Because, in the adaptation of contract exercising the act is possible and defect of the debtor is not important. But, in the impossibility, the act can’t be exercised from anyone and the defect of the debtor is so important for the legal responsibility³⁷.

³⁰ Altunkaya, s. 147.

³¹ Altunkaya, s. 148. ; Tuñçomag, Kenan: Alman Hukukunda Borcun İfasında Asırı Güçlük İle İlgili Objektif Görüşler, (İÜHFM, 32.Cilt, Sayı: 2-4, s. 884-905), s. 887.

³² Reisoglu, s. 356.

³³ Kılıçoğlu, Ahmet: Borçlar Hukuku Genel Hükümler, 6.Bası, Ankara 2005, s. 179.; Serozan, İfa Engelleri, s. 258.

³⁴ Altunkaya, s. 142.; Kocayusufpasaoglu, Necip: İşlem Temelinin Çökmüş Sayılabilmesi İçin Sosyal Felaket Olarak Nitelendirilebilecek Olaganüstü Bir Olayın Gerçekleşmesi Sart Mıdır?, (Kemal Oguzman Anısına Armagan, İÜHFD, İstanbul 2000, s. 503-514), s. 503.

³⁵ Serozan, İfa Engelleri, s. 259.

³⁶ Kılıçoğlu, s. 181.; Altunkaya, 142.

³⁷ Kılıçoğlu, s. 485.;Altunkaya, s. 146.

C. IMPOSSIBILITY AND MISEXERCISING

If the act is not exercised according to contract or the quality of act is defective or faulty, misexercising occurs³⁸. For exercising the acts according to the contract, the factors of the exercising have to be fulfilled. The exercising has to be realized in a method which is agreed. If one of the factor of the exercising is missing, the misexercising arises.

In the misexercising the debtor exercises the act or makes an exercise attempt. But in impossibility, anyone can exercise the act. The acts are divided into three types. The act can be making act, may be lesser act or cession act. The cesser acts are not discussed the misexercising. In these acts only impossibility can be discussed³⁹.

The main measurement which divides these two concepts is, in the impossibility the act can't that be exercised, but in the misexercising the act can be exercised. But this exercising doesn't suit the contract⁴⁰.

D. IMPOSSIBILITY AND DEFAULT

Default is detention in exercising. Default is divided into two types. They are called, debtor's default and demander's default. In the demander's default, the act which the debtor exercises is not accepted by the demander without a justifiable reason⁴¹. On the other hand, in the debtor's default, the debt which matures is not exercised by the debtor in the period that is agreed⁴².

Impossibility is a concept in which the debtor can't exercise the act, even if he or she wants. But, default is a concept in which although debtor or demander can exercise the act, they don't want to exercise it in the period that is agreed⁴³.

Impossibility shouldn't be confused with default. But, sometimes impossibility can arise after the default. The possibility which the debtor can exercise the act after is the main difference between the impossibility and

³⁸ Akıncı, Sahin: Borçlar Hukuku Bilgisi, Konya 2006, s. 239.; Eren, s. 1005.; Kılıçoğlu, s. 486.; Aral, Fahrettin: Türk Borçlar Hukukuna Göre Kötü İfa, Ankara 1985, Yayımlanmamış Doktora Tezi, s. 77.

³⁹ Eren, s. 1006.; Aral, Tez, s. 74.

⁴⁰ Altunkaya, s. 148.

⁴¹ Eren, s. 1045.;Kılıçoğlu, s. 486.

⁴² Eren, s. 1045.;Kılıçoğlu, s. 495.

⁴³ Serozan, İfa Engelleri, s. 241.

default. Also, sometimes these two concepts can collide with each another. In these cases, the most suitable way must be found and applied⁴⁴.

In some cases, especially in absolutely timed operations and in continual debt relations, losing the period gives rise to the latter impossibility. For example; a debtor which can't train the passengers on time, doesn't cause the default. Because there is an impossibility in here.

4. THE ROLE OF IMPOSSIBILITY

A. IMPOSSIBILITY IS THE REASON OF NULLITY

According to Turkish Obligation Law, if the subject of a contract is not possible, this contract is impossible. Here the focus is the initial impossibility. In this situation, the contract that is impossible because of the practical or legal reasons, follows the nullity and it is invalid from the beginning. For the nullity, the impossibility has to be about the subject of the contract and it has to affect to everyone.

The contract which is invalid because of the nullity doesn't create any award and result from the beginning. But, while making the contract, a party knows or has to know the impossibility, in this situation that party has to make up the other party's reliance interest⁴⁵.

B. IMPOSSIBILITY IS A REASON THAT RESCUE THE DEBTOR FROM THE DEBT

According to Turkish Obligation Law, if the impossibility arises after making the contract and if the debtor hasn't got any fault, the debtor rescues from his or her debt. In this situation, the contract doesn't follow the nullity, but the debtor is rescued from his or her debt.

For the impossibility which rescues the debtor from the debt is not important that it is objective or subjective. If the impossibility is not grounded on the debtor's defect, the debtor is rescued from his or her debt⁴⁶.

⁴⁴ Serozan, İfa Engelleri, s. 215.

⁴⁵ Eren, s. 299.; Reisoglu, Safa: Borçlar Hukuku Genel Hükümler, 18. Bası, İstanbul 2006, s.116.; Serozan, İfa Engelleri, s. 162.;Tekinay/ Akman/ Burcuoglu/ Altop, s. 1208.

⁴⁶ Eren, s. 297.; Dural, Sonraki İmkansızlık, s. 12.; Kemal/ Öz, Turgut,s.77.; Tekinay/ Akman/ Burcuoglu/Altop, s 1209.

C. IMPOSSIBILITY IS A REASON OF LIABILITY

If the debtor has a defect in the impossibility which arises after making the contract, the debtor is liable for that. The impossibility which arises after making the contract, can be objective or subjective. It doesn't affect the liability of the debtor. In other words, the debtor is always liable, if he or she has a defect⁴⁷.

CONCLUSION

People, who enter contract relation, have to exercise their acts to each other. The act which is impossible, has very important role both for sides' situations and the contract's health. Turkish Code of Obligation adopt Principle of Freedom for Contracts, on the other hand it constrains this principle. The impossible acts, which are agreed in the contracts, compose one of these bounds.

In this article, the subject of impossibility in Turkish Law is analysed and these existed results are shown below;

Above all the initial objective impossibility is not an impracticability, it is an impossibility, which results from the act of contract. In the impracticability act of contract is possible, but the act's exercise is very hard for the debtor. The impracticability can result from the reasons, which are about the debtor's personality.

Also, the initial impossibility, which is put in order in the article 20 of Turkish Code of Obligation, has to be objective. For this reason only the initial impossibility, which is objective, can cause the invalidity of a contract. So, the differentiation of objective-subjektiv impossibility view can't be defended. Because, in the initial objektiv impossibility, the act not only can't exercised by debtor, but also it can't exercised by everyone, too. But in the other concept, which is called subjektive impossibility in doctrin, the act is impossible only for the debtor, on the other hand it can be exercised by the other ones. We think that, in the real the concept of subjektiv impossibility is not an impossibility, it is only a weakness of debtor.

Finally, in the difference between initial-subsequent impossibility has to casted the moment of the execution of the contract. If the act is impossible

⁴⁷ Eren, s. 298.; Oguzman, Kemal/ Öz, Turgut , s. 77.;Tekinay/ Akman/ Burcuoglu/ Altop, s. 1210.

before the execution of the contract or in the moment of the execution of the contract, initial impossibility can be exist. For this reason the view, which defends the moment of exercising of the contract has to be casted for the difference between initial-subsequent impossibility, can't be apologized.

BIBLIOGRAPHY

- Akıncı, Sahin:** Borçlar Hukuku Bilgisi, Konya 2006.
- Akıntürk, Turgut:** Satım Akdinde Hasarın İntikali, Ankara 1966.
- Akyol, Şener:** Borçlar Hukuku Genel Hükümler I, İstanbul 1995.
- Altaş, Hüseyin:** Borçlunun Sorumlu Olmadığı Sonraki İmkansızlık, (Yayımlanmamış Yüksek Lisans Tezi), Ankara 1991.
- Altaş, Hüseyin:** Eserin Teslimden Önce Telef Olması, Ankara 2003.
- Altunkaya, Mehmet:** Edimin Başlangıçtaki İmkansızlığı, Ankara 2005.
- Aral, Fahrettin:** Türk Borçlar Hukukuna Göre Kötü İfa, Ankara 1985, (Yayımlanmamış Doktora Tezi).
- Ayan, Mehmet:** Borçlar Hukuku Genel Hükümler, 3.Bası, Konya 2002.
- Başpınar, Veyssel:** Borç Sözleşmelerinin Kısmi Butlanı, Ankara 1998.
- Dural, Mustafa:** Borçlunun Sorumlu Olmadığı Sonraki İmkansızlık, İstanbul 1976.
- Dural, Mustafa:** İmkansızlık Kavramı ve Türleri, (BATİDER, 7.Cilt, 1.Sayı, Ankara 1973, s. 13-57).
- Eren, Fikret:** Borçlar Hukuku Genel Hükümler, 11. Bası, İstanbul 2010.
- İnan, Ali Naim:** Borçlar Hukuku Genel Hükümler, Ankara 1984.
- İnan, Ali Naim:** Die Unmöglichkeit der Leistung im deutschen, schweizerischen und türkischen recht, Freiburg 1956.
- Kılıçoğlu, Ahmet:** Borçlar Hukuku Genel Hükümler, 6.Bası, Ankara 2005.
- Kocayusufpaşaoğlu, Necip:** İşlem Temelinin Çökmüş Sayılabilmesi İçin Sosyal Felaket Olarak Nitelendirilebilecek Olaganüstü Bir Olayın Gerçekleşmesi Sart Mıdır? (Kemal Oguzman Anısına Armagan, İÜHFD, İstanbul 2000, s. 503-514).
- Oğuzman, Kemal/ Öz, Turgut:** Borçlar Hukuku Genel Hükümler, İstanbul 2005.

Impossibility In Turkish Law

- Reisođlu, Safa:** Borçlar Hukuku Genel Hükümler, 18. Bası, İstanbul 2006.
- Schwarz, Andreas B.:** Borçlar Hukuku Dersleri, Çeviren: Davran, Bülent, I.Cilt, İstanbul 1948.
- Serozan, Rona:** İfa, ifa Engelleri, Haksız Zenginleşme, 3.Cilt, 4.Bası, İstanbul 2006.
- Tekinay/Akman/Burcuođlu/Altop:** Borçlar Hukuku Genel Hükümler, 6. Bası, İstanbul 1988.
- Tunçomađ, Kenan:** Alman Hukukunda Borcun İfasında Aşırı Güçlük İle İlgili Objektif Görüşler, (İÜHFİM, 32.Cilt, Sayı: 2-4, s. 884-905).
- Tunçomađ, Kenan:** Borçlar Hukuku, 1. Cilt, 4. Bası, İstanbul 1976.
- Velidedeođlu, Veldet/ Özdemir, Refet:** Borçlar Kanunu Şerhi, Ankara 1987.
- Von Tuhr, Andreas:** Borçlar Hukuku Umumi Kısmı, Çeviren: Edege, Cevat, Cilt: 1-2, Ankara 1983.