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CURRENT ISSUES IN TURNOVER-BASED RENTS: RENT DETERMINATION AND ADJUSTMENT

The widespread adoption of turnover-based lease structures in recent years has given rise to significant practical challenges concerning rent increases¹, rent determination, and adjustment claims. These challenges stem primarily from the fact that the Turkish Code of Obligations (TCO) is premised on the assumption that rent is determined as a fixed amount.

Rent Determination:

Pursuant to Article 344/3 of the TCO, in lease agreements with a term exceeding five years, or in agreements renewed after five years, and at the end of each subsequent five-year period, the rent applicable in the new lease year is determined by the court in an equitable manner. In making this determination, the court considers the 12-month average change in the Consumer Price Index (CPI), the condition of the leased property, and comparable market rents. In practice, courts reassess the rent based on prevailing market conditions by appointing expert witnesses to evaluate these criteria and determine the appropriate rent amount.

In turnover-based leases, rent fluctuates depending on the tenant's actual turnover. Consequently, a fixed market rent determined by court-appointed experts is incompatible with the nature of such arrangements. For this reason, the prevailing view in the doctrine holds that, in lease agreements based solely on turnover, the turnover rate should not be subject to modification through a rent determination action, given the risk allocation voluntarily undertaken by the parties. Under this approach, the turnover rate may be altered only through an adjustment claim, provided that the statutory conditions for adjustment under Article 138 of the TCO are met.

By contrast, the minority view in the doctrine argues that, upon request, the court may determine the rent by applying a different turnover rate. According to this view, even in the absence of comparable turnover-based leases, the court may first establish the prevailing

¹ For further details, please refer to our December 2025 bulletin titled "Current Issues in Turnover-Based Rents", accessible at <https://www.kolcuoglu.av.tr/Uploads/Publication/current-issues-related-to-turnover-based-rents-.pdf>.

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market rent, and a revised turnover rate may be set by taking into account the turnover figures applied in recent periods.

The Cassation Court has not yet established a consistent line of case law specifically addressing turnover-based rents. In certain decisions, the Court has accepted that a turnover-based rent may be converted to a fixed rent on the basis of expert reports. Conversely, in a smaller number of decisions, the Court has held that a turnover-based rent may be revised only through an adjustment claim, and only if the statutory conditions for adjustment are satisfied.

In hybrid lease structures, where a minimum fixed rent and a turnover-based rent are determined together, the accepted approach in both the doctrine and judicial decisions is to reassess the minimum rent based on comparable market conditions, while keeping the turnover rate unchanged.

In conclusion, where a purely turnover-based rent structure is preferred, it should be noted that the prevailing practice of the Cassation Court tends toward converting such arrangements into a fixed rent denominated in Turkish lira. Parties may mitigate this risk by opting for a hybrid model consisting of a "minimum fixed rent + turnover-based rent".

Conditions for Adjustment Claim:

Adjustment (hardship) is regulated under Article 138 of the TCO. For an adjustment claim to be granted, the following conditions must be met:

- (i) The occurrence of an extraordinary event that was unforeseeable and could not reasonably have been foreseen by the parties at the time the contract was concluded;
- (ii) The event must not have arisen from the debtor's own actions;
- (iii) The event must have disrupted the contractual balance between the contractual obligations to such an extent that insisting on performance would be manifestly contrary to the principle of good faith; and
- (iv) The debtor must not yet have performed its obligation, or must have performed it while expressly reserving its rights arising from hardship.

In principle, adjustment under Article 138 of the TCO is possible in cases where the rent is determined solely on a turnover basis and in a hybrid structure. However, since a decrease in the tenant's turnover automatically results to a decrease in rent in turnover-based leases, an inherent form of risk-sharing arrangement between the parties already occurs. As a result, it is more difficult to satisfy the statutory requirements of extraordinary circumstances, unforeseeability, and severe imbalance in turnover-based leases.

The Cassation Court consistently underlines that a prudent merchant is expected to anticipate economic, social, and security-related fluctuations at the time of contract formation. Accordingly, the Court adopts a settled approach that a mere decrease in turnover alone does not constitute grounds for adjustment.

In hybrid lease agreements that combine a fixed minimum rent with a turnover-based component, the Cassation Court does not consider it sufficient to evaluate the collapse of the contractual foundation solely on the basis of the fixed minimum rent. Instead, the Court emphasizes that the turnover-based rent component must also be taken into account when

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assessing the contractual balance. Accordingly, the 3rd Civil Chamber of the Cassation Court has held that an analysis completely disregarding the turnover element do not constitute a sound and holistic examination of whether the contractual foundation has collapsed under Article 138 of the TCO.

Method of Adjustment:

While certain court decisions have converted purely turnover-based rents into fixed rent amounts through adjustments or have re-determined the turnover rate itself, the Cassation Court has not yet established a clear and consistent position on the permissibility of such interventions. In the doctrine, however, it is accepted that adjustment may be carried out either by adjusting the turnover rate or by calculating the average monthly rent based on the total rent actually paid in the previous lease year and treating that amount as a fixed rent for adjustment purposes.

In hybrid lease agreements, a clear and consistent approach has also likewise not yet established regarding which rent component should be subject to adjustment. In the doctrine, it is accepted that where the conditions for adjustment are met, restoring the contractual balance in accordance with the good faith principle may require adjusting not only the minimum rent but also, where necessary, the turnover rate.

In conclusion, adjustments in purely turnover-based and hybrid lease agreements are treated as an exceptional intervention in the Cassation Court jurisprudence. An adjustment claim cannot be based solely on economic fluctuations or a decline in turnover. It must be clearly demonstrated that the contractual balance has fundamentally broken down when the agreement is evaluated as a whole. Furthermore, the Cassation Court lacks settled case law on the scope of adjustment and on which rent component should be subject to adjustment in hybrid and purely turnover-based lease agreements. In practice, however, it is observed that first-instance courts may subject both the minimum rent and the turnover rate to adjustment.

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