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CURRENT ISSUES RELATED TO TURNOVER-BASED RENTS

Turnover-based rents have become widely used in recent years, driven by restrictions on the use of foreign currency, persistent inflation, and rising rental costs. Although this rent model has sparked ongoing economic and sectoral debates, its practical implementation remains challenging due to the absence of clear legal provisions and the limited number of academic studies.

The general framework of lease law under the Turkish Code of Obligations (TCO) is based on the assumption that parties agree on a fixed rent. Although turnover-based rents were frequently used at the time the TCO was enacted, the law did not specifically address them. Due to the variable nature of turnover-based rents, which depend on the tenant's sales performance, there are differing interpretations on how legal rules—such as limitations on rent increases and adaptation clauses formulated for fixed rents—should apply to turnover-based rents. The widespread use of hybrid rent models in practice further intensifies these debates.

Article 344 of the TCO imposes a mandatory cap on rent increases for residential and roofed workplace leases, limiting annual increases to no more than the Consumer Price Index (CPI). If the rate of increase determined in the contract is higher than the CPI, the increase is applied only up to the CPI and the part exceeding the CPI is considered invalid. However, there is no clarity on how this cap should be applied to contracts where the rent is determined solely based on turnover or in a hybrid manner, instead of a fixed amount.

The prevailing market view is that, when the rent is determined solely based on turnover, the CPI cap is not applied to rent calculated on a fixed turnover rate. In such cases, when comparing the turnover-based rent to the previous year's rent, no assessment is made regarding whether the increase exceeds the CPI. Many legal commentators support this view. Nevertheless, some argue that the CPI cap should still apply, even for the rents solely based on turnover, due to the mandatory nature of the provision. According to this view, the total rent paid in the previous year should be divided by twelve to determine a monthly fixed rent, and the CPI cap should be applied to this amount. Since the period for postponing mandatory provisions on rent increases has expired, no judicial precedent or guiding court decision on this issue has yet emerged that explicitly adopts or rejects this approach.

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On the other hand, in cases where the rent is entirely turnover-based, neither practice nor commentators discuss whether the turnover rate specified in the contract should be increased annually. There is a tacit consensus that the turnover rate itself should remain unchanged each year.

Hybrid rent models, where a fixed minimum rent is combined with a turnover-based rent, are widely used in practice. Some scholars argue that, in such lease relationships, increases should be made based on the actual rent paid in the prior year and should remain within the statutory cap during renewal periods and rent adjustments. This approach involves dividing the total rent paid in the previous lease year by twelve to determine a monthly amount, then applying the CPI rate to find the maximum monthly rent payable for the following year. Essentially, this view effectively converts the hybrid rent to a fixed rent for the purposes of applying the statutory increase limit. However, another view among commentators and the prevailing approach in practice is that the statutory cap under Article 344 of the TCO should only apply to the fixed minimum rent, while the turnover-based component is excluded. No court decision has yet provided guidance on this matter.

Another practical challenge is that the enforcement courts generally avoid examining turnover rents. Even in cases where the rent stated in the agreement, including the turnover rates, was not objected to, the enforcement courts have issued decisions stating that turnover-based rent should be calculated by general courts through an examination of the tenant's commercial records, on the grounds that turnover-based rent amounts lack sufficient certainty and calculability. Introducing a regulation to guide enforcement courts could streamline procedural efficiency. Moreover, if clear statutory provisions or case law emerge regarding the application of Article 344 of the TCO, enforcement courts could easily calculate turnover rents, and their tendency to avoid examining such rents could be eliminated.

Interpretations that effectively convert turnover-based rents or hybrid rents into fixed rents undermine the parties' freedom to determine rent, making the practical application of turnover-based rents nearly impossible. The absence of an explicit legal framework and court precedents continues to generate conflicting views, reducing legal predictability for both landlords and tenants, and increasing the risk of disputes. There is a growing need for clear statutory guidance that reflects the unique characteristics of turnover-based rent structures.

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