

# THE FRANCHISE AGREEMENT TERMINATION WITH JUSTIFIED REASONS

Ayşe Arat<sup>1</sup>

DOI: <https://doi.org/10.31410/EMAN.2019.49>

---

**Abstract:** *Nowadays, developing commercial life has led companies to develop new methods to enter new markets and meet the expectations of consumers. One of these methods is the franchise system. The system first became popular in the United Kingdom and then in the US and other countries. Franchise agreements generally do not have a legal regulation in the countries where this system is applied. The contracts between the parties form the legal relationship. Within the framework of this relationship, franchisee takes advantage of the brand's recognition, competitiveness, marketing and advertising advantages. The franchiser has the opportunity to transport the product of the same standard to a wider marketing network with low cost and speed. Franchise agreement creates a continuous obligation relationship between the parties. Therefore, the emergence of justified reasons may result in the termination of the contract. The parties may have arranged the reasons for the termination of the agreement between them. Even if no arrangement is made, the nature of the relationship may justify the reason for such an end. Because the franchise agreement establishes a relationship of trust between the parties and the damage of this relationship may make the contract irresistible. In our study, first of all, general information about the legal nature of the contract and the rights and obligations of the parties is given. Then, the conditions for the termination of the justification were evaluated and it was discussed how the situations could lead to this.*

**Keywords:** *franchise, agreement termination, justified reasons.*

---

## 1. INTRODUCTION

The franchising system is a system that has become widespread throughout the world after World War II and allows the goods produced to reach a wide range of customers with a definite standard. The two parties of the contract are the franchiser and the franchisee. The franchiser is able to offer its goods to wide range of customers with the same quality, and the franchisee has the opportunity to benefit from its competitive advantages as being part of a well-known system without losing its independence. It is also possible to terminate the contract, which is profitable and advantageous for both parties, with reasons for the normal termination (the expiration of the contract, the death of the parties, among others) as well as the justified reasons for extraordinary termination. In practice, it is seen that the majority of the debates in franchise agreements in the court are related to the termination of the contract with justified reason. Thus, the termination of the franchise agreement with justified reason and its results have been investigated in this study.

## 2. DEFINITION OF THE CONTRACT AND ITS LEGAL NATURE

Franchising agreement is a contract that causes a continuous obligation relationship. The franchiser licenses the business system which includes production, operation and marketing available to the franchisee for a fee. In return for this, franchisee uses this system to carry out business, marketing and even production activities in its own name and account<sup>2</sup>.

---

<sup>1</sup> Selcuk University Faculty of Law, Turkey

<sup>2</sup> Gürzumar, Osman Berat: Franchise Sözleşmeleri ve Bu sözleşmelerin Temelini Oluşturan Sistemlerin

The origins of the franchise agreement can be traced to the United States. In this respect, the contract used to mean the privilege given by the state to the individuals, and over time, it was used to express the right to use signage and exclusive sale in a specific region. Today's framework contract and the conception of equality between parties have settled in time<sup>3</sup>. It started to be used in European countries after the Second World War. TURYAP was the first example of franchise in the form of real estate chain in Turkey, in 1985<sup>4</sup>. McDonald's, one of the world's largest franchisers, entered Turkish market in 1986<sup>5</sup>.

Today, this system is widely used by both domestic and foreign companies because there are many advantages in terms of franchiser and franchisee<sup>6</sup>. First of all, the franchiser is advantageous in terms of marketing. The franchiser takes advantage of the knowledge of the franchisee, who knows the market and the region better and thus the business reaches a wide range of marketing opportunities in a short time and costs of the organization and personnel are saved. The franchise fee paid by the franchisee and the cooperation it provides increases the profitability of the franchiser. The franchisee takes the advantage of joining a recognized and reliable system with ready customers and organization. Thus, the franchisee has the opportunity to sell by benefitting from the competitive advantage and the commercial advertisement of the franchiser without the need to spend much time.

Although the franchise agreement is a widely used contract, it is not subject to legal regulation. For this reason, it is an innominate contract (atypical) contract. However, considering the general nature of the agreement, it is seen that it carries elements of the contracts regulated by law. Accordingly, elements from the contracts of sales, rent, service, agency, power of attorney and ordinary partnership are available in the franchise agreement<sup>7</sup>. However, some of the elements are similar to other innominate contracts, which are language, know-how and exclusive distributorship agreements<sup>8</sup>. Considering all these features, it can be argued that the franchise agreement has the character of a *sui generis*, innominate contract.

---

Hukuken Korunması, İstanbul, 1995, p. 10; Kırca, Çiğdem: Franchise Sözleşmesi, Ankara 1997, p. 19, 20; Ayata, Yeşim: Franchise Sözleşmesinde Tarafların Borçları, İstanbul 2015, p. 8; Eren, Fikret: Borçlar Hukuku Özel Hükümler, Ankara 2018, p. 969. Honsell, Heinrich: Schweizerisches Obligationenrecht Besonderer Teil, Bern 1995, s. 370; Serozan, Rona: Borçlar Hukuku Özel Bölüm, Temel Kavramlar, Kaynaklar ve İlkeler, Atıpk Sözleşmeler, Satım, Trampa, Bağıslama Uygulama Çalışmaları, İstanbul 2002. s. 78; Şua, Mehmet: Franchise Sözleşmesinin Tanımına Yeni Bir Bakış, s. 61; Gümüş, s. 10; Aydoğdu/Kahveci, s. 30. The Supreme Court defines the franchise agreement as follows: "...long-term continuous contractual relationship between two independent parties, whereby a party, which owns the rights of a product or service, grants the second party the right to conduct the commercial business subject to the said rights by providing information and support with regard to the management and organisation of the business for a certain duration and under certain conditions and restrictions. The franchiser gives the franchisee the rights of a successful brand and its sales, distribution or operation rights for a certain price." Y.19. HD. 25.06.2001, 819/4917 (citing Ayata, p. 8).

<sup>3</sup> Kırca, p. 4, 5; Gürzumar, p. 1, 2; Honsell, p. 369.

<sup>4</sup> For detailed information see <http://franchising sistemi.blogspot.com>; <http://www.franchiseturkey.com/icerikler/turkiyede-franchising-sistemi> (Accessed 21.02.2019)

<sup>5</sup> Many of the international franchise chains operate in Turkey. These chains generally enter Turkish market in two ways. The first, they grant a company the franchise for whole Turkey and allow it to make sub-franchising agreements. Second, they makes franchise agreements in Turkey through a company which they have partnership (Gürzumar, p. 6).

<sup>6</sup> For more information on these advantages, see. Gürzumar, p. 4, 5; Kırca, p. 12 ff.

<sup>7</sup> Honsell, p. 369; Eren, p. 970; Serozan, p.78; Kırca, p. 61 ff.

<sup>8</sup> Honsell, p. 369; Eren, p. 970; Serozan, p.78, 79; Kırca, s. 68 ff.

### 3. FEATURES AND ELEMENTS OF THE AGREEMENT

#### A. Features

The franchise agreement is a contract that binds each party to certain obligations; they have principal obligations to perform<sup>9</sup>. It is also a voluntary contract. Since it is established with mutual and interdependent declarations of will of the parties, it has a consensual nature. Another important feature of the contract is the continuous obligation relationship. The contract gains this feature by the continuity of primary performance obligations of the parties throughout the contract period<sup>10</sup>.

Another feature of the franchise agreement is that it is a framework contract. The framework contract is “a general agreement that describes the rights and obligations of the parties to make complementary contracts afterwards”<sup>11</sup>. Thus, after the parties have concluded the contract that outlines their relations, they can make complementary contracts in accordance with these principles<sup>12</sup>.

#### B. Elements

The elements of the contract can be listed as follows; establishment of a system, entering to this system for a fee, establishing cooperation between the parties and agreement of the parties on all these issues. Although the contents of these elements change according to the type of franchise agreement, it is generally accepted that these are the main elements<sup>13</sup>.

The parties maintain their independence in this contract. This element is especially important for franchisee because the element of independence separates franchisee from attorney, agent or commission agent<sup>14</sup>.

### 4. OBLIGATIONS OF PARTIES

The main obligations of the parties are also the elements of the franchise agreement. Other factors include the parties’ will, the sector they are involved in, the risks they are exposed to, the insurance conditions they make. However, it is not possible and necessary to count all of these elements as they do not have the nature of primary performance<sup>15</sup>. The parties are obliged to protect each other’s interests and loyalty and maintain secrecy<sup>16</sup>, not to compete and to report violations by third parties against the elements included in the system within the duty of loyalty which continues within the contract period and even after the contract expires<sup>17</sup>.

<sup>9</sup> Eren, p. 971; Kırca, p. 20.

<sup>10</sup> Gürzumar, p. 26; Kırca, p. 21; Eren, p. 971.

<sup>11</sup> Eren, p. 972. For extensive information on framework contracts, see. Barlas, Nami, Çerçeve Sözleşme Kavramı ve Çerçeve Sözleşmelerin Özellikleri, Prof. Dr. Erdoğan Moroğlu’na 65. Yaş Günü Armağanı, İstanbul 2001, p. 807 ff.

<sup>12</sup> Kırca, p. 22; Eren, p. 972; Aydoğdu/Kahveci, p. 31.

<sup>13</sup> Eren, p. 972; Kırca, p. 20 ff.

<sup>14</sup> Eren, p. 972; Kırca, p. 24, 25.

<sup>15</sup> Gürzumar, p. 15-16.

<sup>16</sup> For trade secrets and storing in the franchise agreement, see. Sulu, Muhammet, Ticari Sırların Korunması, İstanbul 2017, p. 125, 126.

<sup>17</sup> Gürzumar, p. 17; Ayata, p. 110.

## A. Franchiser's Obligations

The main obligation of the franchiser is to grant the franchisee the production, operation and marketing system. This obligation constitutes the primary performance obligation of the contract. The other basic obligation of the franchiser is to provide all kinds of assistance (consultancy, training, supply, etc.) that the franchisee needs to make the most efficient use of the system<sup>18</sup>.

## B. Franchisee's Obligations

The main obligations of the franchisee include the obligations to use the contractual goods or service on their behalf, support, use the intellectual and industrial elements in the system, to pay and to pay for the production, comply with the principles of production, marketing and operation of the system and pay. All these obligations constitute the primary performance obligation of the franchisee. All these obligations other than payment are continuous, and we can see there is one-time payment in some contracts. Even in some contracts, the fee is hidden in the price of mandatory goods (indirect fee)<sup>19</sup>.

## C. Termination of Contract

There exist several reasons for the termination of the contract. These are usually classified as automatic termination, termination by ordinary and extraordinary causes. As our study is related to termination by justified reason leading to extraordinary termination, general information about other reasons is given.

### I. Automatic Termination

The franchise agreement may terminate automatically by some reasons. These reasons, which do not require a declaration of termination, are considered as causes such as death, loss of license and bankruptcy of the parties<sup>20</sup>.

In such a contract based on the trust relationship between the parties, circumstances such as death, loss of license should, in principle, lead to automatic termination of the contract<sup>21</sup>. However, the parties may decide that the contract will not terminate even in these cases. Death and loss of license in the franchise agreements, where personal qualifications matter, terminate the contract. In cases where personal qualities are not important, the system is predominant and the successors want to continue the system, death and loss of the license should not end the contract<sup>22</sup>. The bankruptcy of one or both parties leads to the same result.

<sup>18</sup> Gürzumar, p. 11, 12; Kırca, p. 109 vd.; Eren, s. 979 vd.; Akıncı, p. 206, 207; Aydoğdu/Kahveci, p. 32; Şua, p. 66 ff. For details on the franchiser's obligations, see. Ayata, p. 59 ff.

<sup>19</sup> Gürzumar, p. 12-15; Kırca, p. 145 vd. ; Eren, p. 981 vd. ; Akıncı, p. 207, 208; Aydoğdu/Kahveci, p. 33; Şua, p. 76 ff. For details on the franchisee's obligations, see. Ayata, p. 98 ff.

<sup>20</sup> Gürzumar, p. 174; Honsell, p. 371; Eren, p. 986; Kırca, p. 185.

<sup>21</sup> In the agency agreement of the Commercial Code, due to its reference to the power of attorney contract, this result is also reached for exclusive distributorship and franchise agreements which are similar employment contracts. Tandoğan, I/1, p. 58; Gürzumar, p. 174; Kırca, p. 186.

<sup>22</sup> Gürzumar, p. 174; Kırca, p. 186; Akıncı, p. 212.

## II. Normal Termination

The most typical cause of normal termination is the expiration of the period. If the franchise agreement is made for a certain period of time, the expiration of this period will automatically terminate the contract. However, it is generally possible to decide on the renewal of the contract at the end of the period if the parties wish to do so<sup>23</sup>.

It may also be decided to terminate the contract through normal termination, although not much in practice. This is possible if there is such a clear provision in the contract<sup>24</sup>. When there is an explicit provision in the contract but there is no provision on how to use the right of normal termination, the conditions of the concrete case, especially whether the investment of the franchisee are amortized, and whether enough time is allocated for the termination notice should be taken into account<sup>25</sup>. Thus, a six-month period of termination in accordance with the interests of both parties regarding the provisions on the termination of the ordinary partnership is adopted in Swiss and Turkish law<sup>26</sup>.

## III. Extraordinary Termination

Extraordinary termination may be defined as “the effective termination of a definite or indefinite period of the permanent obligation relationship with justified reasons before and after the period<sup>27</sup>. In the continuation of this kind of termination obligation relationship, especially unpredictable causes occur and this situation makes the relationship unbearable for the parties<sup>28</sup>.

Extraordinary termination is a result of the continuous contract of the franchise agreement<sup>29</sup> because such a relationship may be unbearable. For this reason, such termination is possible even if the parties have not inserted such a provision in the contract and even if they forbid it. The fact that the contract has been made for a certain or indefinite period does not matter in terms of extraordinary termination. Accordingly, it is not necessary to act in accordance with certain termination periods. Termination with justified reason is an extraordinary way of termination.

## 5. TERMINATION WITH JUSTIFIED REASON

“All conditions that make it impossible to continue to the contract under good faith” until the termination period or the termination of the contract are justified reasons.<sup>30</sup> With the emergence of such conditions, the contract may be terminated with justified reason. The rightful termination is a cause of extraordinary termination and allows for the termination of contracts which generate continuous obligation relationship, even if there is no such arrangement in the law or contract<sup>31</sup>. Therefore, the

<sup>23</sup> Gürzumar, p. 169; Kırca, p. 173; Eren, p. 984; Akıncı, p. 211.

<sup>24</sup> Gürzumar, p. 169; Kırca, p. 174; Akıncı, p. 211.

<sup>25</sup> Gürzumar, p. 171; Kırca, p. 176; Eren, p. 985.

<sup>26</sup> Gürzumar, p. 170; Kırca, p. 178; Eren, p. 985.

<sup>27</sup> Seliçi, p. 156; Kırca, p. 181; İşgüzar, p. 152; Altınok Ormancı, p. 93; Seçer, p. 1.

<sup>28</sup> Altınok Ormancı, p. 94; Seçer, p. 1.

<sup>29</sup> The fact that the franchise agreement is a contract of employment makes it possible to apply the rules regarding the termination of the service and agency contracts regulated by the law with justified reason. Kırca, p. 1065; exclusive distributorship, İşgüzar, p. 154. The Swiss Federal Court’s decision is in this direction (BGE 118 II 165) (citing, Kırca, p. 181, d.p.n. 1065). Extraordinary termination with justified reason, should be deemed to exist in contracts that create a continuous obligation relationship that is not regulated by law. Seliçi, p. 163, 202; İşgüzar, p. 154.

<sup>30</sup> Seçer, p. 1; Seliçi, p. 157; Altınok Ormancı, p. 133.

<sup>31</sup> Seliçi, p. 204; Seçer, p. 1.

trust relationship between the parties is deteriorated due to a number of subsequent reasons, and if maintaining the contract is not expected by the parties under good faith, termination with justified reason is possible<sup>32</sup>.

It is difficult to determine what reasons would be justified beforehand<sup>33</sup>. The difference of the parties, the business lines of each relationship, the provisions of the contract, and the unpredictability of many others are some sources of this challenge. However, franchise contracts often have clauses of termination for justified reasons. In some of these regulations, generally justified reasons are mentioned, in some others examples such as one party's loan default, committing crime, not reaching the agreed turnover are given<sup>34</sup>. In some other arrangements, not fulfilling the principal obligations or violating the relationship severely is mentioned, but what is to be understood is not explained separately<sup>35</sup>. In fact, this is not surprising because it is not possible to predict precisely what kind of justified reason can arise in a continuous relationship.

Arrangements related to the justified reason are regulated whether generally or as examples and not regulated at all in the contract, the reason resulting in the termination must be of particular importance, objectively and subjectively. Objective reasons relate to the fact that "the situation entails the party applying for the justified reason not to allow to end the period in the case of a fixed-term contract according to good faith or to continue until the moment of termination in the case of an indefinite term contract"<sup>36</sup>. Subjective reason related the fact that "it is truly unbearable to continue the contract for the party who terminates the contract"<sup>37</sup>. The objective reasons should be evaluated regarding the good faith, the subjective reasons should be evaluated according to the conditions of the concrete case<sup>38</sup>. However, if the reason is generally objective, the subjective factor is also fulfilled<sup>39</sup>. Therefore, in the interpretation of the situation as a justified reason, the good faith should be taken into consideration first, and then whether a reasonable and honest person with moderate intelligence under the same conditions would terminate the contract for this reason should be evaluated and finally whether the situation makes the relationship unbearable should be considered, whether it is arranged in the contract or not<sup>40</sup>. Termination should not be performed if the situation does not entail both objective and subjective reasons. For example, if the amount of turnover below the figure is significantly below the determined amount, and the main reason for this is that the franchisee does not perform its obligations properly should cause the termination in a contract with a provision that the contract will be terminated when the franchisee does not reach a certain sales turnover<sup>41</sup>. Although the turnover cannot be reached, the amount of the missing is small and the situation is a result of the effort of the obliged, it should not be accepted that a justified reason has occurred.

We have aforementioned that the situation that makes the relationship unbearable for one party according to good faith can be considered as justified reason. In this regard, the deterioration of trust relationship between the parties in such a way to affect the cooperation, the repetitive actions against obligation can be considered as a justified reason<sup>42</sup>. However, actions that cannot be con-

<sup>32</sup> Seliçi, p. 156, 157; Kırca, p. 181; Seçer, p. 1.

<sup>33</sup> Seçer, p. 1.

<sup>34</sup> Gürzumar, p. 172; Kırca, p. 183; Akıncı, p. 211.

<sup>35</sup> Gürzumar, p. 172

<sup>36</sup> Seçer, p. 1; Altınok Ormancı, p. 139.

<sup>37</sup> Seçer, p. 1.

<sup>38</sup> Seçer, p. 1.

<sup>39</sup> Seçer, p. 1; Seliçi, p. 158.

<sup>40</sup> Seçer, p. 1.

<sup>41</sup> Gürzumar, p. 174; Kırca, p. 184; Eren, p. 985.

<sup>42</sup> Gürzumar, p. 172; Eren, p. 986.

sidered as affecting the realization of the purpose of the contract or which do not interfere with the trust relationship due to the individual nature should not be evaluated in this regard<sup>43</sup>. Otherwise, even disputes that can be settled independently need to be included in the justified reason, which is not a proper way. For example, non-performance or faulty performance is contradictory to the individual contract. Such situations do not need to be solved by the termination due to justified reason<sup>44</sup>. The continuity of such situations and the fact that the contract is unbearable due to the situation can be regarded as a justified reason<sup>45</sup>.

The termination of the contract with justified reason shall not make a court decision mandatory. However, since there will be a conflict between the parties about the justified reason, the judge shall decide whether there is a justified reason for the extraordinary incident in the concrete case by using the discretionary power (CC. Art. 4)<sup>46</sup>. The judge shall express his/her opinion about the justification of the situation. If the reason is justified, the result is termination. In other words, the judge decides whether the contract is terminated or not terminated, but whether the reason is justified or not. If the reason is justified, no other legal conclusion should be made by termination<sup>47</sup>. The judgment should be based on an objective justification, but should also take into account all aspects of the concrete incident because a situation that is justified in a contractual relationship may not bear the same result in another relationship<sup>48</sup>.

Justified reasons often arise with the faulty action of a party. However, this situation is not specific to a faulty action because the situation that makes the continuation of the relationship unbearable can be caused by an objective reason, not the fault of the parties<sup>49</sup>. For example, serious problems in economic life can lead to such a situation<sup>50</sup>.

The emergence of justified reasons does not automatically terminate the contract. In addition to the emergence of the reason from the objective perspective, the party that asserts this reason must declare that it terminates the contract<sup>51</sup>. This statement must be made within a reasonable period of time after the justified reason has appeared. The declaration of a termination made much later than the appearance of the reason may make it difficult to evaluate these reasons as justified reasons and even be interpreted as the acceptance of these actions<sup>52</sup>. In other words, the fact that a long time has passed since the emergence of the reason may make relying on this reason contradictory to good faith. It is not obligatory to indicate the reason for termination in the declaration of termination. However, declaring the reason of termination is useful because it is important in terms of regulating the interests and debts of the other party<sup>53</sup>. The notification of termination shall explicitly include the will to terminate the contract. Without this will, only the notification of the right to ter-

<sup>43</sup> Gürzumar, p. 173; Kırca, p. 182.

<sup>44</sup> Gürzumar, p. 173.

<sup>45</sup> Gürzumar, p. 173.

<sup>46</sup> Gürzumar, p. 172; Kırca, p. 182; Eren, p. 985; İşgüzar, 157.

<sup>47</sup> Seliçi, p. 187; Seçer, 1.

<sup>48</sup> Seçer, p. 1.

<sup>49</sup> Gürzumar, p. 171; Kırca, p. 182; Seliçi, p. 194.

<sup>50</sup> Gürzumar, p. 173. Adverse opinion on the changes in the economic conditions do not lead to termination with justified reason in exclusive distributorship contracts, İşgüzar, p. 156. Here, it is also possible to think that the emergence of conditions that would lead to the adaptation of the contract (the unpredictable change in the initial conditions and the deterioration of the balance between the performance) would result in the termination of the contract as a form of adaptation. For the adaptation of the contract to the changing conditions and the termination of the contract in this framework, see. Arat, p. 185 ff.

<sup>51</sup> Seçer, p. 1.

<sup>52</sup> Seçer, p. 1.

<sup>53</sup> Seliçi, p. 163; Seçer, p. 1.

minate the contract or the right of termination is not considered as the will of termination<sup>54</sup>. Despite the fact that the will of termination is notified to the other party, there may be dispute between the parties on the justification of the reason. For this reason, it is observed that the party wishing to terminate the contract with a justified reason has filed lawsuit in order to determine the justification of the termination<sup>55</sup>.

The right to justify the termination of the contract is based on good faith. The party that continues to fulfill their contractual obligations or that uses the justified reason against the counterpart to obtain extra benefit in the contract should not benefit from the possibility of termination despite the fact that there are situations that are regarded as justified reason<sup>56</sup>. In such a case, although the justified reason emerges as an objective element, the unbearableness, which is the subjective element, does not occur. Instead of using the right to terminate when it is learned that an unbearable situation occurs and the situation produces justified reason, avoiding terminating the contract trying to afford advantage to its counterpart is against good faith.

## 6. THE RESULTS OF TERMINATING WITH JUSTIFIED REASON

The termination of the contract terminates the contract proactively. Although there is a justified reason to terminate, if normal termination is performed, the justified reason can no longer be used<sup>57</sup>. However, it is necessary to look at the case if it is found that the reason is not justified. When it is clear that the party wishing to terminate the contract with justified reason does not want to be bound by the contract, it is possible to regard the declaration of extraordinary termination as a normal termination if it is seen that the continuation of the contract is not beneficial for both parties. In the case of a franchise agreement, which is based on an intimate trust relationship, it may be useful to regard the situation in this way in most cases<sup>58</sup>. However, it can be accepted that the contract will continue to exist if there is no justified reason and the other party abuses it.

Since the termination with justified reason is an extraordinary way of termination, first, the consequential results, then, specific results in terms of franchise agreement should be examined.

When evaluating the general results, first of all, it should be examined whether there is a faulty party. If the faulty action of a party constitutes a justified reason for the termination of the contract, the other party may claim compensation from the faulty party. This compensation is a complete compensation, which covers the positive damages, which will bring the damaged person to the ordinary state within the contract period or at the normal termination of the contract<sup>59</sup>. However, if the other party does not have a fault in the emergence of the justified reason and especially if there is not an act that is contradictory to the obligations, the compensation may not be granted and if the concrete case justifies the conditions of a compensation, the compensation may be granted in accordance with the principle of equity<sup>60</sup>.

<sup>54</sup> Seçer, p. 1.

<sup>55</sup> Y. 6. HD. 29.04.2013, 4469/7407; Y. 11. HD. 15.12.2016, 2015/13423, 2016/9607; Y. 11. HD. 21.02.2014, 2012/11173, 2014/3235; Y. 11. HD. 15.06.2015, 1673/8257; Y. 11. HD. 24.04.2015, 2014/16268, 2015/5724 Y. 11. HD. 14.04.2014, 2013/18290, 2014/7335 (lexpera)

<sup>56</sup> Seçer, p. 1.

<sup>57</sup> Seçer, p. 1.

<sup>58</sup> Kırca, p. 185.

<sup>59</sup> Seçer, p. 1.

<sup>60</sup> Seçer, p. 1.

As to the special results related to the franchise agreement, first of all the franchisee should not use the intangible goods (name, brand, sign) of the contract and return other things given to him (prescription, drawing, graphics, customer list, advertising material, hardware tools, among others) to the franchiser with the termination of the contract. Likewise, the franchiser should keep the business secret revealed to it and know-how, if any, described in the framework of the contractual relationship after the contract. As a result of the trust relationship established between the parties during the contract, is the obligation to store confidential information continues after the termination of the contract. This is the case even if the confidentiality obligation is not regulated in the contract<sup>61</sup>.

The prohibition of competition after the contract is a result of the obligation of the franchisee to protect each other's interests and the good faith<sup>62</sup>. The purpose of this is to prevent the franchisee from doing business in the same business sector and environment by using the know-how that is still owned by the franchisee and avoid customer loss. Thus, the provisions on the prohibition of competition are usually regulated in franchise agreements<sup>63</sup>.

Another consequence of termination of the franchise agreement is the payment of customer compensation. Customer compensation is the compensation that the franchisee may demand from the franchiser after the termination of the contract in return for the expansion of the customer environment and increase in the sales. In practice, it is accepted in the doctrine and judicial decisions that such compensation may be claimed, which is a matter of fairness<sup>64</sup>.

## 7. CONCLUSION

Franchise agreement is a framework contract that is widely applied in the world and creates a continuous obligation relationship. It is a preferred contract as it provides branding, sale and extension of market share with the parties that it turns into a part of the system.

Continuous quality of contract and the trust relationship created by the sharing of issues such as confidence, information, and marketing strategy between the parties requires that the contract may be terminated for a justified reason. If the reasons that may arise will affect the relationship and make it unbearable for the parties, it is necessary to accept the termination of the contract with justified reason.

Justified reason is the reason that negatively affects the contractual relationship objectively and subjectively. If the resulting cause is of the nature that affects the contract objectively and that makes the relationship irresistible for the parties, the party subject to it may terminate the contract. The justified reason may be caused by an act against the obligation, or even without the fault of one of the parties. Such termination is a termination which the parties may apply even if it is not regulated in the contract.

Termination of the contract bears a proactive result and the contractual relationship is eliminated. Accordingly, the party is obliged to give what they have received as part of the franchise system. Termination of the contract does not terminate obligations of confidentiality or non-competition

<sup>61</sup> Gürzumar, p. 187; Kırca, p. 187.

<sup>62</sup> Gürzumar, p. 175; Kırca, p. 190; Can, p. 58.

<sup>63</sup> Gürzumar, p. 175; Kırca, p. 190; Honsell, p. 371; Can, p. 59.

<sup>64</sup> Gürzumar, p. 176 ff. ; Kırca, p. 194 ff.; Honsell, p. 371; Serozan, p. 79; Yusufoglu, s. 178-179. For assessment of the Federal Court's decision on the subject see. Öz, s. 169-173.

between the parties. It is also possible for the franchisee that has increased sales and customer base with a good performance to claim customer compensation from the franchiser after the expiration of the contract.

In the light of all these evaluations, the conditions, the current business line in question and the understanding in the business environment should be taken into consideration as concrete events in termination of the franchise agreement with justified reason and in such a contract where the element of trust outweighs, the possibility of termination with justified reason should be interpreted broadly. However, interpretations which may lead to abuse of this right should be avoided as well.

## REFERENCES

- [1] Akıncı, Şahin: Karşılaştırmalı Borçlar Hukuku Özel Hükümler, Türk-Kazak Hukuku, Ankara 2004.
- [2] Altınok Ormancı, Pınar: Sürekli Borç İlişkilerinin Haklı Sebep Feshi (6098 sayılı Yeni Türk Borçlar Kanununa Göre Sözleşmelerin Feshi), İstanbul 2011.
- [3] Arat, Ayşe: Sözleşmenin Değişen Şartlara Uyarlanması, Ankara 2006.
- [4] Ayata, Yeşim: Franchise Sözleşmesinde Tarafların Borçları, İstanbul 2015.
- [5] Aydoğdu, Murat/Kahveci, Nalan: Türk Borçlar Hukuku Özel Borç ilişkileri (Sözleşmeler Hukuku), Ankara 2014.
- [6] Barlas, Nami: Çerçeve Sözleşme Kavramı ve Çerçeve Sözleşmelerin Özellikleri, Prof. Dr. Erdoğan Moroğlu'na 65. Yaş Günü Armağanı, İstanbul 2001.
- [7] Can, Ozan: Franchise Sözleşmelerinde Kararlaştırılan Sözleşme Sonrası Rekabet Yasağı Bağlamında Bir Yargıtay Kararının Değerlendirilmesi, Ankara Barosu Dergisi, 2014/I (<http://www.ankarabarusu.org.tr/siteler/ankarabarusu/tekmakale/2014-1/2.pdf>). (d.a.: 15.03.2019).
- [8] Eren, Fikret: Borçlar Hukuku Özel Hükümler, Ankara 2018.
- [9] Gümüş, Mustafa Alper: Borçlar Hukuku Özel Hükümler, Cilt I, İstanbul 2013.
- [10] Gürzumar, Osman Berat: Franchise Sözleşmeleri ve Bu sözleşmelerin Temelini Oluşturan Sistemlerin Hukuken Korunması, İstanbul, 1995.
- [11] Honsell, Heinrich: Schweizerisches Obligationenrecht Besonderer Teil, Bern 1995.
- [12] İşgüzar, Hasan: Tek Satıcılık Sözleşmesi, Ankara 1989.
- [13] Kırca, Çiğdem: Franchise Sözleşmesi, Ankara 1997.
- [14] Öz, Kerem: Federal Yüksek Mahkemenin 5 Şubat 2015 tarih ve VII ZR 109/13 sayılı Kararı: Franchise Sözleşmesinin Sona Ermesinden Sonraki Denkleştirme Talebi, Antalya Bilim Üniversitesi Hukuk Fakültesi Dergisi, Cilt: 4, Sayı: 7, Haziran 2016.
- [15] Seçer, Öz: Olağanüstü Fesih (LexPera Hukuk Bilgi Sistemi) (d.a.: 18.03.2019).
- [16] Seliçi, Özer: Borçlar Kanununa Göre Sözleşmeden Doğan Sürekli Borç İlişkilerinin Sona Ermesi, İstanbul 1977.
- [17] Serozan, Rona: Borçlar Hukuku Özel Bölüm, temel kavramlar, Kaynaklar ve İlkeler, Atipik Sözleşmeler, Satım, Trampa, Bağışlama Uygulama Çalışmaları, İstanbul 2002.
- [18] Sulu, Muhammet: Ticari Sırların Korunması, İstanbul 2017.
- [19] Şua, Mehmet: Franchise Sözleşmesinin tanımına Yeni Bir Bakış, Yeditepe Üniversitesi Hukuk Fakültesi Dergisi, Cilt: IV, Sayı: 2, Yıl: 2007.
- [20] Tandoğan, Haluk: Borçlar Hukuku Özel Borç İlişkileri, C. I/1, Ankara 1985.
- [21] Yusufoglu, Fülürya: Denkleştirme Talebinin Kıyasen Uygulanması için Gereken Kıyas şartları Işığında Tekel Hakkı Vermeyen Sürekli Sözleşme İlişkilerine Uygulanması Sorunu, Bahçeşehir Üniversitesi hukuk Fakültesi Dergisi, cilt 11, Sayı: 137-138, Ocak-Şubat 2016.