

LAWSUIT FOR THE TERMINATION OF THE JOINT STOCK COMPANY FOR JUST CAUSE UNDER TURKISH LAW

Yunus Emre Ay*

Antalya Bar Association, Turkey

E-mail: yunusemrey0@gmail.com

(Received: April 2025; Accepted: May 2025; Published: May 2025)

Abstract: Shareholder relations in a joint stock company may go well or may become unbearable over time. For this reason, the Turkish Commercial Code provides minority shareholders with the right to file a lawsuit for the termination of the joint stock company for just cause, especially for the protection of minority rights. The legislator has also allowed the judge to decide on alternative solutions instead of terminating the company for just cause. The legislator has not specified what constitutes just cause termination and has left this matter to the doctrine and judicial decisions. The purpose of this study is to clarify the issues left to the doctrine and judicial decisions in the light of the doctrine.

Keywords: Termination of the Joint Stock Company; Just Cause; Lawsuit.

1. Introduction

In joint stock companies, general meeting resolutions are passed by the majority shareholders. They are naturally more effective on the corporate governance compared to the minority shareholders. Owing to this situation, they may abuse their dominant position [1]. Therefore, According to the Turkish Commercial Code No. 6102; in the presence of justified reasons, it is possible for the minority shareholders to file a "lawsuit for the termination of the joint stock company for just cause". The basis of the regulation of this lawsuit in the Turkish Commercial Code is the idea that the majority shareholders in the joint stock company continuously abuse their dominance in the company and this situation makes the existence of the joint stock company unbearable [2].

Minority shareholders in a joint stock company may file a lawsuit for the termination of the joint stock company for just cause against the joint stock company. Minority shareholders are shareholders representing at least 10 percent of the shares in non-

* Corresponding author: Yunus Emre Ay. *E-mail: yunusemrey0@gmail.com*

public joint stock companies and at least 5 percent in public joint stock companies. The shareholders who will file a lawsuit do not have to be a shareholder in these ratios. More than one shareholder may also come together and exercise their right to file a lawsuit for the termination of the joint stock company for just cause. The articles of association may set a lower rate for filing this lawsuit [3].

The lawsuit for the termination of the joint stock company for just cause shall be filed at the commercial court of first instance where the headquarters of the joint stock company is located. The board of directors represents the joint stock company in this case.

The legislator has not stipulated any time limit for filing a lawsuit for the termination of the joint stock company for just cause. Due to this situation, the time limit for filing a lawsuit is determined according to the principle of good faith. Therefore, filing a lawsuit long after the occurrence of the situation giving rise to the just cause may be considered an abuse of rights [4].

2. The Concept of Just Cause

The concept of just cause is not defined in the Turkish Commercial Code. Therefore, judicial decisions and doctrine will have an important function when interpreting the concept of just cause. Assumptions and negative expectations cannot be considered just cause [5].

2.1. Situations That May Be Considered as a Just Cause

2.1.1. Abuse of Power by Majority Shareholders

In a joint stock company, the majority shareholders may abuse their dominance in the general assembly to put the minority shareholders in a very difficult situation. In such a case, the situation of the minority shareholders in the company may become unbearable. As a result, minority shareholders may lose their effectiveness in making decisions in the general assembly. As a result of this situation becoming permanent, minority shareholders may file a lawsuit for termination of the joint stock company for just cause. In cases where the negative actions are not continuous, minority shareholders may protect their rights by filing an action for annulment or an action for liability. For example, a joint stock company's articles of association stipulate that dividend distribution shall be made once a year. If the joint stock company complies with this rule but has not distributed dividends only once, then the joint stock company may not be dissolved for just cause. However, if the dividend distribution is continuously postponed, in such a case, termination for just cause may arise [6].

2.1.2. Failure of the Joint Stock Company to Generate Profit

All companies are established for a specific purpose. A joint stock company, on the other hand, is established for any economic purpose and is subject to not prohibited by law. Although it is not explicitly written in the Turkish Commercial Code, joint

stock companies are established for economic gain. One of the reasons for the termination of a joint stock company for just cause is the inability to make a profit is temporary, it is not possible to file a lawsuit for the termination of the joint stock company for just cause. The inability to generate profit must be permanent. In cases where the inability to make a profit is temporary, it is not possible to file a lawsuit for the termination of the joint stock company for just cause [7]. However, it is contrary to the ordinary course of life to expect the joint stock company to make a profit in a short time or continuously in the periods when it is newly established [8].

2.1.3. Actual Forfeiture of the Registered Capital

The registered capital refers to the total value of the assets that the shareholders undertake to bring to the company in exchange for shares in order for the company to carry out its activities stipulated in the articles of association. In this respect, the registered capital represents the amount of resources that the company obtains from its shareholders. While these resources obtained from the shareholders are included in the company's assets, the amount of the registered capital, which shows the total value of these sources, takes its place in the liabilities section of the company's balance sheet as a nominal value. The reason why the registered capital is included in the liabilities section is to observe the course of business in the company [9]. The registered capital has also a threshold function. The threshold function of the capital is very important. For example, if the company's total assets have decreased as a result of losses, this decrease means that the registered capital has been depleted, and regardless of the ratio of the loss to the registered capital, no profit can be distributed to the shareholders until this loss is eliminated. In essence, this means that profits generated in subsequent periods can only be used to cover the loss [10]. Therefore, it is imperative to establish and maintain the registered capital. For this reason, a decrease in the registered capital may render the purpose and subject matter of the joint stock company impossible. In this case, a lawsuit for termination of the joint stock company for just cause shall be filed.

2.1.4. Change of Purpose of the Joint Stock Company

Joint stock companies may be established for any economic purpose and subject not prohibited by law. Regardless of the purpose of any joint stock company, it is its goal to achieve that purpose while carrying out its activities. Therefore, the change of the purpose of a joint stock company is subject to severe conditions, although it is foreseen in the Turkish Commercial Code. According to Article 421 paragraph 6 of the Turkish Commercial Code; the registered shareholders who have voted negatively to the general assembly resolution regarding the complete change of the subject of business or the creation of privileged shares are not bound by the restrictions on the transferability of shares for 6 months from the publication of this resolution in the Turkish Trade Registry Gazette. In cases where the period specified

in the article has expired and if the continuation of the joint stock company has become unbearable due to the change in the purpose of the company, the shareholders may file a lawsuit for the dissolution of the joint stock company for just cause [11].

2.1.5. Internal Corruption

Joint stock companies are legal entities. From time to time, corruption in joint stock companies may be committed by shareholders or members of the board of directors. There are various provisions in the Turkish Commercial Code regarding the prevention of corruption within the company. For example; according to Article 358 of the Turkish Commercial Code; "Shareholders may not borrow money from the company unless they fulfill their due debts arising from capital commitments and the company's profit together with free reserves is sufficient to cover previous years' losses." As it can be understood from this article, there are certain rules for shareholders to incur debts to the joint stock company. A shareholder's borrowing in violation of this rule constitutes internal corruption. Likewise, according to Article 395 of the Turkish Commercial Code, a member of the board of directors may not enter into any transaction with the company on his/her own behalf or behalf of another person without the authorization of the general assembly; otherwise, the company may claim that the transaction is null and void. The other party cannot make such a claim. The non-shareholder members of the board of directors and the non-shareholder relatives of the members of the board of directors specified in Article 393 of the Turkish Commercial Code (lower and upper lineage of the shareholder, his/her or his/her spouse's relatives up to and including the third degree) may not borrow cash from the joint stock company. The joint stock company cannot provide surety, guarantee and collateral for these persons, cannot assume liability and cannot take over their debts. Article 395 of the Turkish Commercial Code is a provision against internal corruption in terms of board members. The amount and continuity of internal corruption are very important for the termination of the joint stock company for just cause [12].

2.1.6. Mismanagement of the Company

The board of directors is in charge of managing the joint stock company. If a joint stock company is poorly managed by the board of directors, dismissing the members of the board of directors may be considered a solution. The dismissal of the members of the Board of Directors at the general assembly meeting is an exception to the principle of adherence to the agenda, and the members of the Board of Directors may be dismissed at ordinary or extraordinary general assembly meetings in the presence of just cause (e.g. mismanagement of the company). Moreover, a liability lawsuit may be filed against the members of the board of directors who caused the mismanagement. However, in cases where the dismissal of the members of the board of directors or the filing of a liability lawsuit against them is not a permanent remedy

for the economic destruction of the company, a lawsuit for dissolution of the joint stock company for just cause based on mismanagement may be filed [13]. Moreover, in such a case, the judge may not dismiss the action for dissolution of the company for just cause on the grounds that the members of the board of directors have not been sued for liability [14].

2.1.7. Personal Differences

Under normal circumstances, since a joint stock company is a capital company, reasons related to the personalities of the shareholders do not constitute a just cause for termination [15]. Therefore, the personal characteristics of the shareholders are not important in a joint stock company. Generally, there are many shareholders in a joint stock company and they do not know each other very well. Personal ties between shareholders in joint stock companies are not tight and do not come to the forefront. However, in joint stock companies with few shareholders, personal differences may come to the fore. Therefore, in joint stock companies with a small number of shareholders, various fights between the shareholders may lead to the termination of the joint stock company for just cause [16]. For example; if there is a divorce case due to serious reasons such as adultery between the parties in a joint stock company with 2 partners where a married couple is shareholders, in such an environment, the partnership relationship in that joint stock company is no longer sustainable. This situation is a just cause of termination for a joint stock company [17]. As a result, if it is impossible to maintain the relations between shareholders in the joint stock company, it may be the last resort as a reason for termination for just cause [18].

2.1.8. Differences of Nationality

Foreign nationals may be shareholders or board members in a joint stock company. Persons with different nationalities may come together in the same company. In the event of conflicts such as war between the countries of nationality of these persons, if personal disputes arise and this situation makes the continuation of shareholding unbearable, a just cause termination lawsuit may be filed [19].

2.1.9. Other Reasons

The reasons for termination of a joint stock company for just cause are not limited to the reasons mentioned above. It is possible to give the following examples of other grounds for termination with just cause [20]:

- Ordinary general assembly meeting cannot be held continuously
- Continuous violation of minority shareholders'; right to obtain and review information
- Causing severe financial losses to minority shareholders

- The dividend distribution rate has been gradually decreasing year by year, while the salaries, attendance fees and compensation of the board members, who are majority shareholders, have been gradually increasing.

In a case before the Turkish Court of Cassation, the plaintiff shareholders forged their signatures on the list of attendants at the general assembly meeting. Upon this incident, the shareholders whose signatures were forged filed a criminal complaint against some of the shareholders. The incident in question was considered by the Court of Cassation as an attitude that undermines trust. Therefore, it is an event that may be subject to a lawsuit for termination of the joint stock company for just cause [21].

2.2. Judge's Different Solution

In the case of dissolution of joint stock companies, dissolution is considered as a last resort. Therefore, even if the plaintiff requests the dissolution of the joint stock company, the judge may decide on another solution. Thus, the continuation of the company is ensured. By ensuring the continuity of the company, the interests of third parties (company employees and those who trade with the company) are protected [22]. It should not be forgotten that companies play a very important role in strengthening the economy of a country and creating employment. Therefore, other than the dissolution of the joint stock company, another appropriate and acceptable solution may be proposed.

- Solution Appropriate to the Situation: Apart from the dissolution of the joint stock company, it is very important to find an alternative solution that is appropriate to the situation. This alternative solution should be a solution that can adequately protect the interests of the plaintiff minority shareholders. The alternative solution should end the abuse of rights by the majority shareholders in the concrete case in question [23].

- Acceptable Solution: The solution found by the judge must be acceptable to all parties concerned. The main issue here is the principle of proportionality. The proposed solution should strike a balance between the interests of the majority shareholders and the minority shareholders. When this balance of interests is established, this solution will be accepted as an acceptable solution by the interested parties [24].

2.2.1. Removal of the Plaintiff Shareholder from the Company

Instead of dissolving the joint stock company, the judge may order the plaintiff shareholder to pay the real value of his/her shares and dismiss him/her from the company. The company must be able to continue without the plaintiff shareholder in order for the court to decide on dismissal from the company. Nevertheless, the decision to dismiss the plaintiff from the company is innovative. With the finalization of the decision of dismissal from shareholding, this decision has a prospective effect and is binding even for third parties. Even if the shareholder does

not receive the value of his/her share, the shareholding relationship between the shareholder and the joint stock company is terminated upon the finalization of the court decision. In case of disqualification from shareholding, the actual value of the shareholder's shares as of the date closest to the date of the decision must be paid [25].

2.2.2. Decision to Amend the Articles of Association

The judge may also decide to amend the articles of association as an alternative solution. In this way, the abuse of power by the majority shareholders may be prevented and some deadlocks regarding the management of the joint stock company may be overcome. The judge shall consider the principle of proportionality when making such decisions [26].

Amendments to the articles of association may take various forms. For example, the articles of association may be amended to distribute dividends. Amendments regarding the exercise of voting rights may be made in the articles of association. The articles of association may be amended to provide that minority shareholders may be represented on the board of directors [27].

2.2.3. Other Solutions

In the case of termination of a joint stock company for just cause, the reasons for just cause are not limited, nor are the alternative solutions limited. Changing or abolishing the decisions of the general assembly and the board of directors, deciding on dividend distribution, and deciding on the division of the company should also be among the alternative solutions [28].

3. Conclusions

Firstly, the action for just cause dissolution of a joint stock company is a type of action that may terminate the existence of a joint stock company in commercial life in the presence of just cause. The aim here is to protect the minority shareholders against the majority shareholders. However, since companies have an important place in the national economy and commercial life, the dissolution of the joint stock company is accepted as a last resort. Therefore, instead of dissolving the joint stock company, the judge is also authorized to accept other alternative solutions that are appropriate and acceptable. Alternative solutions are not limited in number and will be proposed as a solution according to the concrete case. In this way, the interests of the employees of the joint stock company and other persons who trade with that company are protected and the public interest is pursued.

Secondly, the definition of just cause is not defined in the Turkish Commercial Code. Therefore, the concept of just cause will be evaluated according to the concrete case in the light of doctrine and judicial decisions. Therefore, the concept of just cause will be handled separately in each concrete case according to conscience and equity.

Acknowledgments

The author thanks the anonymous reviewers and editor for their valuable contribution.

Funding

This research received no specific grant from any funding agency in the public, commercial, or not for profit sectors.

Author Contributions

The entire paper was written by Yunus Emre Ay.

Disclosure Statement

The author does not have any competing financial, professional, or personal interests from other parties.

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