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TERMINATION OF THE PUBLISHING CONTRACT FOR PERSONAL REASONS [1]

Yayım Sözleşmesinin Kişisel Nedenlerle Sona Ermesi

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Öz

Yayım sözleşmesi bir fikir ve sanat eserinin yayımlatma hakkının devrine ve bu eserin teslimine ilişkin bir sözleşmedir. Bu sözleşmenin iş görme amacı güden sürekli edimli bir sözleşme olması nedeniyle sözleşmenin taraflarının kişisel özellikleri ayrı bir öneme sahiptir. Sözleşmenin tarafları yayımlatan ve yayımcıdır. Bir fikir ve sanat eserinin sahibi ya da eser sahibinin halefi yayımlatan olabilir. Yayımcı ise yayım faaliyetinin gerektirdiği sorumlulukları üzerine alan gerçek veya tüzel kişidir. Yayımcı eserin çoğaltılması ve yayılması borcunu üstlenirken, yayımlatan ise eser üzerindeki yayımlatma hakkının devri ve eserin teslimi borcunu üstlenir. Sözleşmenin konusu ise fikir ve sanat eseridir. Bir fikir ve sanat eseri, sahibinin özelliklerini bünyesinde bulundurur. Bu nedenlerle özellikle eser sahibi tarafın kişiliğinden kaynaklı sebeplerle sözleşmenin sona erme ihtimali doğar. Çalışmamızda 6098 sayılı Türk Borçlar Kanunu'yla yapılan değişiklikler de dikkate alınarak yayım sözleşmesinin kişisel nedenlerle sona ermesi konusu incelenecektir. Kanunda kullanılan yeni kavramların açıklamaları konumuzla bağlantılı olduğu ölçüde izah edilecektir. Eski Borçlar Kanunu ve 6098 sayılı Türk Borçlar Kanunu'nun karşılaştırılması çalışmamıza yön verecektir. İlk olarak sözleşmenin tarafları ve sözleşmenin kurulması aşaması açıklanacaktır. Sonrasında sözleşmenin özel sona erme nedenlerinden bahsedilecektir. Son ana başlıkta ise yayım sözleşmesinin tarafların kişiliğinden kaynaklı sona erme nedenleri belirtilecektir. Kural olarak yayımlatanın ölümü, fikir ve sanat eserini tamamlama yeteneğini kaybetmesi veya eseri kendi kusuru olmaksızın tamamlayamaması kişisel nedenlerle sözleşmenin sona ermesine sebebiyet verir. Ancak hakkaniyete göre sözleşmenin kısmen ya da tamamen sürdürülmesi mümkünse, hâkim sözleşmenin devamına karar verebilir. Yayımcı tarafın iflas etmesi hâli de sözleşmenin kişisel nedenlerle sona ermesi sonucunu doğurabilir. Yayımcı güvence gösterdiği takdirde sözleşme ilişkisi devam eder.

Anahtar Kelimeler: Yayım sözleşmesi, yayım sözleşmesinin sona ermesi, yayımlatma hakkı, sözleşme

Abstract

A publishing contract is a contract regarding the transfer of the right to publish an intellectual and artistic work and the delivery of this work. Personal characteristics of the parties to the contract have a special importance, since this contract is a continuous performance contract for work and service. The parties of the contract are the publisher and the owner or successor of the intellectual and artistic work. The owner or successor (executor, devisees, heirs, and literary assigns) of the intellectual and artistic work can be the part who will have the work published. Publisher, on the other hand, is a natural or legal person who takes on the responsibilities required by the publishing activity. While the publisher undertakes the duplication and dissemination of the work, the owner undertakes the transfer of the right to have the work published and the delivery of the work. The subject of the contract is intellectual and artistic work. An idea and a work of art embody the characteristics of its owner. Thus, the possibility of termination of the contract arises, especially due to the personality of the intellectual and artistic work owner. In our study, taking into account the amendments made with the Turkish Code of Obligations numbered 6098, the issue of termination of the publishing contract due to personal reasons will be examined. The explanations of the new concepts used in the law will be explained to the extent that they are related to our subject. Comparison of the Former Code of Obligations and the Turkish Code of Obligations No. 6098 will guide our work. First of all, the parties to the contract and the stage of establishment of the contract will be explained. Then, the special reasons for termination of the contract will be mentioned. In the last section, the reasons for the termination of the publishing contract due to the personality of the parties will be stated. As a rule, the death of the owner, the loss of the ability to complete the intellectual and artistic work, or the inability to complete the work without his/her own fault, causes the termination of the contract due to personal reasons. However, the judge may decide to continue the contract when it is possible to maintain it partially or completely according to equity. The bankruptcy of the publisher may also result with the termination of the contract for personal reasons. If the publisher provides assurance, the contractual relationship continues.

Keywords: Publishing contract, termination of the publishing contract, right of publication, contract

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INTRODUCTION

The "publishing contract", which enables an intellectual and artistic work to be heard through reproduction and dissemination, is one of the employment contracts included in the Turkish Code of Obligations No. 6098. It embodies the characteristics of the owner of an intellectual and artistic work, which is the subject of the publishing contract. The parties to the publishing contract are the publisher and the owner.

Parties have a special importance in personal performance contract. In the contract, the creation of the work is a personal performance. Hence, the personal characteristics of the creator who created the work may cause him/her to be preferred. No situation arising from the personality of the parties terminates the contract. In the Turkish Code of Obligations, only the bankruptcy of the publisher is regulated as the reason that arises from the personality of the publisher and terminates the contract. However, other personal reasons arising from the publisher must also result in the termination of the contract. Thus, there is a gap in the provisions of the Turkish Code of Obligations regarding the publishing contract and this gap will be tried to be filled in our study. The publisher of the contract can be the owner of the work or the successor. If a publishing contract is made for the publication of a ready-made intellectual and artistic work, the reasons arising from the personality of owner do not result in the termination of the contract. On the other hand, if a work that has not yet been prepared and has been committed to be prepared is the subject of the contract, the reasons arising from the personality of the owner of the work may cause the termination of the contract.

In our study, it will be understood in which cases the contract is terminated thanks to the identification of the parties to the contract. Because, in the publishing contract, there is a close spiritual relationship between the owner and the work. This relation is necessary for the emergence of an original work. The relation between a creator and a work of science and literature can be given as an example. If the creator makes a publishing contract for the reproduction and dissemination of his/her work, he/she becomes the owner party of the contract. The publisher party, on the other hand, makes a publishing contract by taking into account the characteristics of the contracted party. The reasons arising from the personality of the creator may make it difficult or impossible to complete an intellectual and artistic work that is the subject of the contract. At this point, it is of particular importance to determine in which cases the reasons arising from the personality of the parties will terminate the contract. Our study is the first work to deal with this subject directly.

In our article titled as "The Termination of the Publishing Contract for Personal Reasons", the concepts of owner and publisher will be briefly explained. After the parties of the contract are identified, the establishment stage of the contract will be determined. The parties are required to agree on the transfer of the "*right to publish*" on the intellectual and artistic work, which is the subject of the contract and suitable for reproduction and dissemination. After briefly mentioning the special terminations regarding the possibility of extinction of the work or copies of the work that is the subject of the contract, our work will result on the subject of the termination of the publishing contract due to the personalities of the parties.

METHOD

Although the publishing contract is generally, a contract established for scientific and literary works; it is possible, with the clear explanation of art. 487 of Turkish Code of Obligations (TCO), to say that all intellectual and artistic works can be the subject of the publishing contract, provided that they are suitable for reproduction and dissemination. In this context, in our study, a comparison was made with the Code of Obligations No. 818 in terms of the amendments brought by the TCO, which came into force in 2012.

In order to make the above-mentioned comparison and to explain the termination of the publishing contract due to personal reasons, it is necessary to use the data collection technique. Data and document analysis method was used in the study. Current decisions of Supreme Court are also included in the relevant sections.

RESULTS

Parties and Establishment of the Contract

Owner

Owner is a meta-concept that meets the expressions of *"creator and successor of the creator".* While TCO provision of art. 487, which defines the publishing contract, refers to *"publisher"*, it includes concepts of creator and successor in relation to *"owner"*, but never uses the term itself. [3]. The owner is a natural or legal person who has financial and moral

[3] The legislator used the term "owner" in the ongoing articles. For instance, TCO art. 489/II: *"Owner vs publisher…"* (Kılıçoğlu, 2021, p. 516).

rights on the intellectual and artistic work (Yarsuvat, 1984, p. 201). The owner or successor of the work is the concessionnaire of the intellectual property rights. In this context, the author or successor may be the owner. When the owner concludes a contract regarding the work, there must not be any rights like copyright belonging to someone else - in a way that prevents the owner's authority to dispose of the work. There must be no circumstance that would prevent the publisher from exercising its reproduction and dissemination rights. For example, the owner of a work who has transferred his/her right to reproduce to another person for a period of five years cannot make a publishing contract on this work. Only after the right to reproduce is returned to him/her, he/she can establish a publishing contract.

Intellectual and artistic work, in terms of its nature, is like an inseparable whole with the owner. Although the work does not have a monetary value in the full sense, it is possible for the owner of the work or his/her successor to gain financially from it. In terms of its nature, the right on the work is an absolute and strictly personal right. It is also expected that the person who has such a unique right on the work will be granted the right to have it published. The publisher, one of the parties to the publishing contract, can be one or more than one person (Giritlioğlu, 1967, p.45). Since the publisher has an obligation to deliver the work, he/she must be fully licensed. On the other hand, there is no obstacle for other license groups to be the owner or successor of the work.

Publisher

Publisher is not defined in the Turkish Code of Obligations. In FCO instead of the term "publisher" which was used as *"naşir"* in Turkish, TCO used the term"publisher", which is *"yayımcı"* in the same language.[4] When a publisher is mentioned, the first thing that comes to mind is a business dealing with publishing activities (Yavuz et al., 2014, p. 1129; Tekinalp, p. 254; Uygur, 2012, p. 2253). However, not only a business but also a person who has never done any publishing activity before can be a publisher. In this case, the publisher can be defined as a *"real or legal person who takes on the responsibilities required by the publishing activity"*.

While being a party to the publishing contract, the publisher is under the obligation of duplication and dissemination. The publisher uses his/her rights on the work and fulfills its obligations within the period or within the framework specified in the contract. In the publishing contract, the transfer of the right to "publish" on the work is in question. Publisher assumes the right to have it published which is an intellectual right in accordance with the contract; but does not gain ownership of the work (Gökyayla, 2000, p. 254). Since the parties have to determine the duration or the number of editions in the contract, the transfer of the right to publish is also limited with time. That is, either the time specified in the contract expires or the number of copies agreed upon by the parties is exhausted. With the expiration of the contract, the right to publish returns to the owner.

Establishment of the Contract

A publishing contract is a contract in which the owner undertakes to leave an intellectual and artistic work to the publisher for publication, and the publisher undertakes to reproduce and publish it (TCO art. 487). For the establishment of a publishing contract, the parties must agree on the publication of an intellectual and artistic work. The subject of the publishing contract is "intellectual and artistic work" (TCO art. 487). Instead of the concept of "literary and industrial work" used in the FCO, the legislator preferred the concept of "art of idea and work" in the TCO. Intellectual and artistic works are products of the human mind, intellectual and literary activity. The unique characteristics of the human mind result in the unique characteristics of ideas and works of art (Hatemi, Serozan and Arpacı, 1992, p. 371), because mental activities vary from person to person. Since intellectual and artistic work is formed as a result of mental activity, it carries traces of the person who creates it. These works, which have the characteristics of the author, are collected in four groups in LIAW(Law on Intellectual and Artistic Woks) (Memiş, Nal and Suluk, 2009, p. 17; Baygın, 2001, p. 297; Yenidünya, 2006, p. 242; Cinoğlu, 2010, p. 5). They are works of science and literature, works of music, works of fine art and works of cinema. In addition, if compilations and adaptations also contain the characteristics of the owner[5], they can be regarded as the fifth group in ideas and works of art. (LIAW art. 6).

Evaluating the work groups regulated in LIAW is important for determining the subject of the publishing contract. Because being included in one of these groups is one of the conditions of being an intellectual and artistic work of art. Other conditions are; the work is to have the characteristics of the owner[6], to be perceived in the outside world and to be suitable for use. (Karahan et al., 2009, p. 34). With the enforcement of the TCO, according to the generally accepted

[4] In the FCO, terms such as "yayınlayan" and "yayıncı", publisher in English, were used in the doctrine: Those who use "yayınlayan": (Ayiter, 1981, p. 242; Tekinalp, 2012, p. 259; Tunçomağ, 1977, p. 1145; Serozan, 2007, p. 137; Yarsuvat, 1984, p. 205; Tüysüz, 2007, p. 176). While OLGAÇ (1979) uses the term "yayınlayıcı".

[5] *"Privilege is the basic element of the protection of the work."*: (Bozgeyik, 2009, p. 171).

[6] For instance, a translation can be made by using the translation program on the computer. If the program here is a program that performs the translation directly, it is not regarded as a work (Gökyayla, 2000, p. 69).

view in the doctrine, the subject of the publishing contract covers all types of intellectual and artistic works[7] (Serim, 2017, p. 4). However, an intellectual and artistic work that is the subject of a publishing contract must be suitable for reproduction and dissemination (Serim, 2017, p. 4-5). At the same time, the subject of the publishing contract, as in all contracts, should not contradict with the article of the TCO 26 and 27. Otherwise, the contract will be null and void (Tunçomağ, 1977, p. 1129; Yarsuvat, 1984, p. 198; Giritlioğlu, 1977, p. 83).

In order to establish a publishing contract, the publisher must undertake the publication of an intellectual and artistic work (TCO art. 487). FCO used the expression "…commitment to leave the work to a publisher…" for the owner[8]. One of the important issues in the publishing contract is the transfer of rights on the work. For this reason, the expression "…leaving it to the publisher for publication…" in the TCO was more appropriate. The aforementioned publishing activity includes duplication and dissemination (Kılıçoğlu, 2021, p. 520). For the publication of the work, it is necessary to submit the work to the publisher and transfer the right to have it published. The party that undertakes the delivery of the work and the existence of the right to have it published is the one who has it published[9]. The publisher who receives the work begins the reproduction activity. It presents the copies of the works it reproduces to the public for sale or other purposes.

In order to establish a publishing contract, it is essential that the parties agree on the publication of an intellectual and artistic work. It should be clearly stated in the contract that the right to publish the work (the right to reproduce and disseminate) is transferred for the publication of the work[10] (YARSUVAT, 1984, p. 144). Contracts that are not subject to the transfer of the right to publish are not publishing contracts. In other words, only the "transfer of the right to reproduce" or the "transfer of the right to distribute" does not result in the establishment of a publishing contract[11]. In that case, it is necessary and essential for the parties to agree on the delivery of an intellectual and artistic work and the transfer of the right to have it published for the establishment of a publishing contract (Yavuz, Acar and Özen, 2014, p. 1121; Ateş, 2012, p. 411).

The intellectual and artistic work that is the subject of the contract can be a completed or an incomplete work. The will of the owner and the publisher must agree on the subject of the contract, the transfer of the right to have it published, and the delivery of the work. The contract is valid even if the work is not delivered (Erel, 2009, p. 94; Yavuz, Acar and Özen, 2014, p. 1125). Pursuant to the new regulation brought together with article 488 of the TCO, the publishing contract will not be valid unless it is made in simple writing. The declaration of will of the parties must comply with this form of validity. In addition, the work that is the subject of the publishing contract must not be contrary to the mandatory provisions, morality, public order, personal rights or its subject must not be impossible (TCO art. 27). Besides, the TCO has brought some provisions regarding the content of the contract in its special regulations regarding the publishing contract. The first of these arrangements relates to the number of editions. If the number of editions is not specified in the contract, the publisher has the right to make only one edition (TCO art. 491/I). The second situation imposes an obligation on the parties to establish the contract. The parties have to agree on the number of copies or the duration of the contract (TCO art. 491/II). The number of copies and the number of editions are different from each other and concepts that need to be distinguished. Number of editions is the publisher's activity of duplicating a certain number of intellectual and artistic works at once. The number of copies is each copy of the intellectual and artistic work prepared for sale or for any other purpose. The duration or the number of copies must be specified in the contract. It is not compulsory to specify the number of copies. For example, owner Y and publisher M have to determine the duration of the contract or the number of copies when establishing a publishing contract for a work. In this context, the parties can agree on 1000 copies. M can offer 1000 copies for sale by making a single print, unless there is an agreement to the

[7] Kılıçoğlu (2021), however, states that the subject of the publishing contract is generally a scientific and literary work. Gökyayla (2016), on the other hand, argues that the "publishing contract" provisions in the Turkish Code of Obligations are written for works printed on paper. Although the subject of the publication contract is usually a scientific and literary work, it does not mean that any intellectual and artistic work suitable for reproduction and dissemination cannot be the subject of a publishing contract. Therefore, with TCO, there is no obstacle to defend our view that the subject of the publising contract has expanded. The same view was also accepted by Üstün (2005) in the period of the Former Code of Obligations.

[8] Hirsch evaluated this situation in the definition as an ambugity. It is not sufficient for the contract to be established only by undertaking the delivery of the work. The work must be delivered in a manner suitable for reproduction and dissemination within the scope of the publishing contract. In other words, in addition to the delivery of the work, the rights on the work must be transferred to the other party (Hirsch, 1948, p. 226).

[9] The right to have the work published is transferred to the publisher as soon as the contract is established, and automatically returns to the owner after the contract terminates: (Serozan, 2007, p. 138).

[10] Which rights are transferred in the publishing contract must be clearly stated. Otherwise, the invalidity of the contract may result. See the Supreme Court decision on the subject: *"The contract is invalid because the financial rights transferred to the publisher are not expressly stated in the contract. - the author or his heirs can transfer the financial rights of the book to another publisher at any time…".* Supreme Court, 11. CD, 15.7.2005 D., 2004/10681 F.N., 2005/7713 D., Kazancı İçtihat Bilgi Bankası (https://lib.kazanci.com.tr/)

[11] Delivery of the work to the printing house only for reproduction is considered as a work contract: (Yavuz, Acar and Özen, 2014, p. 1121; Yarsuvat, 1984, p. 196; Tunçomağ, 1977, p. 1133).

contrary. Since the parties are not obliged to determine the number of copies, not specifying the number of copies in the contract does not cause the invalidity of the contract. Briefly, the parties have to determine the number of copies in the contract or the duration of the contract. Thus, the tendency to release the publisher regarding the number of copy has ended[12] (Zevkliler and Gökyayla, 2013, p. 585; Dinç, 2013, p. 158).

Special Reasons for Termination of the Contract

The distruction of the work or the printed copies, the exhaustion of the number of prints or the expiration of the period determined in the contract, the use of the right of withdrawal and personal reasons can be considered as the reasons for termination specific to the publishing contract.

The case of the distruction of the work, which is the subject of the publishing contract, is edited in TCO art. 498. Also FCO art. 382 has the same content (Yarsuvat, 1984, p. 213). The destruction of the only existing copy of the work means extinction according to TCO art. 498 (Ayiter, 1981, p. 246). The work is deemed to have been destroyed even if it is corrupted in a way that cannot be reproduced (Becker, 1993, p. 675; Uygur, 2012, p. 2277). Even if the work is destroyed as a result of an unexpected situation after it is delivered to the publisher, the publisher has to pay the price agreed in the contract (Uygur, 2012, p. 2276; Tüysüz, 2007, p. 182; Giritlioğlu, 1967, p. 65)[13].

Loss of print means the disappearance of copies printed by the publisher. After the provision of the law regulating the destruction of the work, TCO art. 499 regulates the destruction of printed editions[14]. Considering the aforementioned provision, if the whole or part of the printed copy is lost as a result of an unexpected situation before it is put up for sale, the publisher can reprint to replace the lost copies by bearing the costs without paying any price to the owner (TCO art. 499/I). If the publisher can replace lost copies without undue expense, it is obligated to do so[15] (TCO art. 499/II). In that case, if the printed one is destroyed as a result of an unexpected situation and the new printing does not require excessive costs, the contractual relationship continues. However, if replacing the lost copies requires excessive costs, the contractual relationship is terminated (Giritlioğlu, 1967, p. 71).

The parties to the publishing contract have to determine either the number of prints or the duration of the contract in accordance with TCO art. 491/II. The parties cannot decide the opposite of this mandatory provision brought by TCO. Although it is not clearly stated in TCO, the publishing contract relationship ends if the number of editions is specified in the contract, when the usual time for the number of editions expire[16]; it ends if the contract period is determined, when that period expires (Yılmaz, 2007, p. 345).

The owner concludes a publishing contract on his/her work in order to be satisfied materially and morally and transfers the right to have it published to the publisher (Zevkliler et al. , p. 615; Ayiter, 1981, p. 218; Öz, 2012, p. 113). If the rights transferred in the publishing contract are not used by the publisher, the owner has the right to withdraw[17] (Yavuz, 2013, p. 2608 ve 2609; Ayiter, 1981, p. 218; Demirbaş, 2011, p. 252). The right of withdrawal is a right that creates disruptive innovation[18] (Giritlioğlu, 1967, p. 81; Ayiter, 1981, p. 219). It is regulated in TCO with 491/III and LIAW

[12] *" It should be noted that the mandatory elements that must be included in the contract according to the letter of the article are either the duration of the contract or the number of copies.";* (Yavuz, Acar and Özen, 2014, p. 1143; See, 2012, p. 24); *"Although the law imposes such an obligation on the parties, it has not mentioned what the legal sanction would be in case of non-compliance with this obligation. It is not necessary for the decision in the mentioned paragraph to have been brought at the time of the conclusion of the contract, but pursuant to this paragraph, the parties must come to an agreement on the number of copies or the contract."*: (Zevkliler et al. , 2013, p. 614).

[13] In case of destruction of the work, the counter-action damage belongs to the publisher: (Hatemi, Serozan and Arpacı, 1992, p. 380).

[14] No changes were made in FCO art. 383, except for correction and refinement. On the other hand, the situation in this regulation, is one of the situations in which "*The damage arising before servicing of the debt is imposed on the creditor by law or contract*" stated in Turkish Code of Obligations art. 136/II/c.2 (Özdemir, 2012, p. 362).

[15] Reprinting is in the interests of both the publisher and the owner. Because the owner's aim is not only to earn financial gain from work. In the publishing contract, the moral satisfaction of the owner is also important. In the event that the printed copies of the work subject to the publishing contract are destroyed, the interests of both the publisher and the owner could be harmed, assuming that the publisher is not given the right and obligation to reprint.

[16] *"Although there is a very low rate of printed works compared to the number of copies, it should be accepted that they are out of print."*: (Yarsuvat, 1984, p. 214). This view, put forward during the FCO period, can be based on FCO 374/I. EBK m. 374/I: *"The owner or her successor cannot make a disposition to the detriment of the publisher in all or part of the work, unless the editions that the publisher has the right to print are finished."* In accordance with this provision, which specifies how long the debt of avoidance should continue, if the number of copies is exhausted, the publisher can dispose of his/her work. Therefore, there may be a result such as waiting for the number of copies to run out before the publishing contract expires. However, FCO art. 490/I attributed termination of the avoidance debt to the passing of the usual time for the number of copies to run out if the number of copies is determined.

[17] These rights transferred by the publishing contract are also the obligations of the publisher. If the publisher fails to meet obligations, it means default: (Tunçomağ, 1977, p. 1162).

[18] *"The right of withdrawal is a variant of the right of withdrawal, which has indirect effects specific to the obligatory transaction, in a broad sense, which is made effective with a direct power."*: (Serozan, 2007, p. 137). The transfer of the right to publish takes place together with the contract. The right to reverse this dispositional process is the right of withdrawal. With the exercise of the right of withdrawal, the right to publish returns to the owner.

with art. 58[19] (Hatemi, Serozan and Arpacı, 1992, p. 383; Erel, 2009, p. 299). While TCO art. 491/III regulates the right of withdrawal of the publisher who is not the owner of the work, FSEK art. 58 regulates the right of withdrawal of the publisher who is owner of the work. However, the TCO mentiones the right of withdrawal of the owner in the provisions of the publishing contract and does not explain the method of exercising this right. In this context, the owner can use the method in LIAW art. 58 while using the right of withdrawal. If the right of withdrawal from the contract is exercised, the publishing contract expires (Giritlioğlu, 1967, p. 81).

Termination for Personal Reasons of the Parties

The publishing contract may be terminated for reasons arising from the personality of the parties. These reasons are regulated in TCO art. 500.[20] The reasons arising from the personality of the owner will be mentioned first as in TCO art. 500.

Reasons Arising from the Personality of the Creator

When the author who is the owner of the work dies before completing it[21], loses the ability to complete it, or it becomes impossible to complete the work without his/her fault , the publishing contract terminates (TCO art. 500[22]) (Olgaç, 1976, p. 47). Except for the reasons listed in TCO art. 500, there is no reason to terminate the contract arising from the personality of the owner. In the same provision, although the bankruptcy of the publisher is accepted as a reason for termination, the bankruptcy of the owner is not included[23]. In case of bankruptcy of the owner, a solution must be found according to the general provisions[24].

Death of Creator

If the creator dies before completing the work, the publishing contract automatically terminates.[25] (FCO art. 500/I) (von Tuhr, 1983, p. 639). It is an appropriate arrangement for the legislator to use the term "creator" instead of "owner" (Öztan, 2008, p. 828), because the reason that automatically terminates the publishing contract is the death of the creator who is the owner of the work. The death of the owner (the successor of the author) who is not the creator of the work does not terminate the publishing contract. The reasons listed in TCO art. 500/I are related to the publishing contract on the incomplete work. If the owner is the creator of the work, the person who has to complete the work is also the owner. However, the owner may not be the creator of the work, but the successor of the creator of the work. In this case, the successor of the creator becomes liable for a completed work in the publishing contract. If a publishing

[19] In our legal system, apart from the aforementioned articles, there is no other regulation that gives the right of withdrawal to author who is the owner of the work: (Yavuz, Acar and Özen, 2014, p. 1145).

[20] FCO art. 384 contains the same expressions.

[21] If author who is the owner of the work dies after the work is completed, the publishing contract does not terminate with the mention that the delivery of the work belongs to her successors: (Öztan, 2008, p. 831).

[22] It is in accordance with LIAW art. 50/III: *"If the owner of the work dies or loses his/her ability before the work is completed, or if it becomes impossible to complete the work without fault, the mentioned commitments are automatically annulled. The same provision is valid in cases where the other party goes bankrupt or becomes incapable of using the financial rights it has acquired pursuant to the contract, or it becomes impossible to use it without fault."*

[23] *"If the publisher goes bankrupt, the publisher can write its receivables to the bankruptcy estate. In addition, if the publisher's rights are jeopardized, the publisher may request assurances from the owner. If the owner cannot provide assurance, the publisher may exercise its right to withdraw from the contract. The bankruptcy of the owner of the work is not an obstacle to the completion of the work. Though an incomplete work is the subject of the publishing contract, the bankruptcy of the owner is not a reason to terminate the contract. If the creator does not complete his/her work after going bankrupt, the publisher can write the consequential damages to the bankruptcy estate."* (Tekinalp, 2012, p. 264). See similar comment. : (Bilge, 1971, p. 283).

[24] TCO art. 98: *"In a contract that imposes a mutual debt, if the right of the other party is endangered due to the inability of one of the parties to perform its debt and especially due to its bankruptcy or the ineffectiveness of the lien, that party may refrain from performing its own performance until the performance of the counter act is secured. The party whose right is endangered may also withdraw from the contract if the desired assurance is not given within a reasonable time."* In this case, the party that falls short of performance will be the owner. Therefore, the publisher, on the other hand, may avoid the performance of his/her own act based on performance weakness. It is called anticipatory breach. This right of anticipatory breach can also be asserted in the publishing contract: (Eren, 2014, p. 997).

[25] For the Supreme Court Decision on the subject, see: "*In the lawsuit arising from the copyright agreement between the parties, according to the claim, defense and expert report within the scope of the file, the work done is so incomplete that the publisher cannot use it and cannot be compelled to accept according to the criteria of justice, the author dies during the correction and elimination of the deficiencies, after the conclusion of the contract and but before the performance; the decision by the court which rejected the original lawsuit, in which the plaintiff demanded the unpaid portion of the royalty fee and pecuniary and non-pecuniary damages due to the defendant's withdrawal from the contract, on the grounds that the fulfillment of the contract had become objectively impossible; the decision regarding the acceptance of the counterclaim, where the defendant claimed that he did not qualify for the advance he gave in the hope that he would do the work on the basis that the plaintiffs could not perform the work subject to the contract on time and completely, and demanded the collection of it with interest is correct."* Supreme Court, 11. CD, 6.7.2006 D., 2005/7411 F.N., 2006/8038 D. , Kazancı İçtihat Bilgi Bankası (https://lib.kazanci.com.tr/) According to the jurisprudence of the Supreme Court, the completion of the work cannot be accepted in this situation, and the contract terminates. With the termination of the contract in this way, the publisher will not be liable for payment of wages or indemnity. See also. FCO art. 384, equal to TCO art. 500, uses the term *"author"* which is *"müellif"* in Turkish, *"creator of the work"* which means *"eser sahibi"* in Turkish.

contract is made for an incomplete work, the completion of the work is a personal act. However, the obligation of the successor of the work to deliver the completed work, as the owner, is not a personal act. TCO art. 500/I is a correct regulation, which does not consider the death of the successor of the creator as a reason for terminating the contract.

Loss of the Creator's Ability to Complete the Work

If the creator of the work loses his/her ability to complete the work, the publishing contract automatically terminates (Kılıçoğlu, 2021, p. 533). Loss of the ability of the creator to complete the work, severe illness, loss of the competence to distinguish, loss of limbs that prevent the completion of the work as a result of accident, etc. can be given as examples (Giritlioğlu, 1967, p. 72; Yılmaz, 2007, p. 317). However, the fact that the creator has a heavy workload or has financial difficulties does not mean that he/she has lost his/her ability to complete (Bilge, 1971, p. 283; Öztan, 2008, p. 831).

The creator of the work can lose his/her ability to complete her work either through her own fault or without any fault. For instance, the creator of the work has a traffic accident caused by his/her own fault and loses his hands in this accident before completing the work; he/she loses his ability to complete the work[26]. Since TCO art. 500/I does not distinguish between faulty or faultless by saying "…..*he/she loses her ability to complete the work* ..." the publishing contract automatically terminates, as in the example given.

The Impossibility of Completion of the Work without the Fault of the Creator

Natural disasters such as earthquakes and floods are examples of situations where it becomes impossible to complete the work without the fault of the author[27]. In addition, losing the ability to complete the work can also be considered as an example. In this case, the publishing contract automatically terminates.

Continuation of the Contractual Relationship

Even though the cases of termination due to reasons arising from the personality of the author have occurred, the judge may decide to continue the contractual relationship and make the necessary changes if the fulfillment of the contract completely or in part is found possible and fair (TCO art. 500/I/b.2). Thanks to this provision, the interests of the creator and the publisher are tried to be reconciled (Ayiter, 1981, p. 248). However, it should not be ignored that this reconciliation is possible in exceptional cases (Yılmaz, 2007, p. 320).

If one of the reasons in TCO art. 500/I provision occurs, one of the parties may apply to the judge for the continuation of the contractual relationship (Yavuz, Acar and Özen, 2014, p. 1151; Tüysüz, 2007, p. 184; Giritlioğlu, 1967, p. 74; Öztan, 2008, p. 830). The judge may decide to terminate the contractual relationship by not seeing the continuation of the contractual relationship as possible and equitable[28]. The judge may consider it possible and equitable for the contract to sustain partially[29]. At this stage, the publication of the completed part must make sense (Tüysüz, 2007, p. 185). If the judge considers the completion of the work by another creator possible and fair, he/she may decide to continue the contractual relationship (Yavuz, Acar and Özen, 2014, p. 1151). The work can only be completed by a third person suitable for the personality of the creator of the work (Tunçomağ, 1977, p. 1159; Ayiter, 1981, p. 248). It is accepted that the judge can apply to experts while taking one of the aforementioned decisions (Tunçomağ, 1977, p. 1159; Yavuz, Acar and Özen, 2014, p. 1151; Ayiter, p. 248; Tüysüz, 2007, p. 185).

Publisher's Personality Reasons

In the special provisions regulating the TCO publishing contract, there is no provision stating that the publishing contract will be terminated due to reasons arising from the personality of the publisher, except in the case of the publisher's bankruptcy. For this reason, TCO art. 486 can be applied by analogy (Zevkliler and Gökyayla 2013, p. 589; Giritlioğlu, 1967, p. 77; Yarsuvat; 1984, p. 215). As a rule, the publisher's death or loss of competence in a publishing contract does not terminate the contract (Zevkliler and Gökyayla, 2013, p. 589). However, if the personality of the publisher is important in the publication of the work, the publishing contract may also be terminated for the reasons stated (Yarsuvat, 1984, p. 215; Giritlioğlu, 1967, p. 77). Whether the publisher, who is a party to the publishing contract, is a well-known publishing house or not is an example for this (Zevkliler et al., 2013, p. 589). The reasons arising from the personality of the publisher may also cause the termination of the contract.

[26] Physical or mental disabilities of the creator can be considered as an example of this situation: (Kılıçoğlu, 2021, p. 533).

[27] TCO art. 136/I, which regulates performance impossibility, is parallel to TCO art. 500/I: *""If the performance of the debt becomes impossible for reasons for which the debtor cannot be held responsible, the debt ends."* See also. Situations such as the owner of the work catching an incurable disease that prevents him from completing the work, being treated under intensive care, being constantly in need of treatment, and working which impaires the health of his work can be given as examples of "*impossibility without the fault of the owner of the work":* (Kılıçoğlu, 2021, p. 534).

[28] *"Such a decision may be taken if the completion of the work is as difficult as or more difficult than its re-production."*: (Yavuz, Acar and Özen, 2014, p. 1151).

[29] "Scientific works in particular may have a value of public interest.": (Ayiter, 1981, p. 248).

Publisher's bankruptcy, which is the termination of the publishing contract due to reasons arising from the personality of the publisher, is regulated in TCO art. 500/II. If the publisher goes bankrupt, he/she may not be able to properly perform his/her debts arising from the publishing contract (Ayiter, 1981, p. 248; Giritlioğlu, 1967, p. 76). In this case, the owner may agree with another publisher to publish his/her work (TCO art. 500/II) (Berki, 1973, p. 154). The legislator has regulated the bankruptcy of the publisher before the publication of the work in this relevant article (Tekinalp, 2012, p. 265). If the work is published before the publisher goes bankrupt and the publisher's right to compensation has arisen, the publisher can have this right accepted as bankrupt's estate (Tekinalp, 2012, p. 265). In this case, the publishing contract will not terminate.

If the publisher wishes to continue the publishing contract relationship in case of bankruptcy, it must provide assurance that it will fulfill its obligations arising from the contract. This assurance must be reliable and serious in terms of both financial and moral rights (Uygur, 2012, p. 2282). If the publisher gives an assurance to the owner in this regard, the publishing contract relationship continues. However, if the publisher fails to give an assurance to the owner in such a timely manner, the publishing contract relationship is terminated (Ayiter, 1981, p. 249; Berki, p. 154; Hatemi, Serozan and Arpacı, 1992, p. 383; von Tuhr, 1983, p. 645). In addition, the publisher does not have to make a new publishing contract (Tunçomağ, 1977, p. 526).

CONCLUSION

The parties to the publishing contract are the publisher and the owner. A publisher is a business that typically engages in duplication and dissemination. Owner, on the other hand, is the creator or successor of an intellectual or artistic work. If the creator or successor of an intellectual and artistic work wants to be the owner, the right to publish on the work must not be transferred. The right to publish the work includes the right to reproduce and disseminate. While the owner undertakes the obligation to deliver an intellectual and artistic work to the publisher in order to have it published, the publisher undertakes the obligation to reproduce and disseminate the work subject to the contract. In accordance with recently created TCO art. 491/II, the parties have to determine the number of copies or the duration in the contract. The destruction of the intellectual and artistic work that is the subject of the contract may lead to the termination of the contract. If the work is destroyed as a result of an unexpected situation after it is delivered to the publisher, the publishing contract ends as a rule. Exceptionally, if the owner has a second copy or if the publisher can create the same work with a little effort, the contractual relationship continues. In case the printed copies are destroyed, if a new one cannot be replaced, the contract terminates. If the parties have determined the number of copies without determining the duration of the contract, the number of copies runs out or the customary time passes for the number of copies to run out, the contract is terminated. A publishing contract is an employment contract that can be terminated for reasons arising from the personality of the parties. In the event that the owner who is the creator dies, the publishing contract terminates as a rule. If the owner is the successor of the creator, his/her death does not terminate the contract. Because the creator of the work is not the successor of the owner of the work. The owner of the work may lose his/her ability to complete the work after the contract is established. When it becomes impossible to complete the work without the fault of creator who is the owner of the work, or he/she loses the ability to complete the work due to reasons such as serious illness, the publishing contract terminates. If one of the parties applies to the judge, the contractual relationship continues if the judge finds the continuation of the contractual relationship partially or completely fair.

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