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## CONTRACTUAL JUSTICE AND THE PRINCIPLE OF GOOD FAITH: A JUDICIAL PERSPECTIVE FROM FORMAL FREEDOM TO SUBSTANTIVE FAIRNESS

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### ABSTRACT

Freedom of contract constitutes a cornerstone of private law; however, in contractual relationships characterized by structural or economic imbalance between the parties, this freedom frequently assumes a merely formal character. In situations where one party possesses the ability to unilaterally determine contractual terms, party autonomy often fails to deliver substantive fairness. Within this context, the principle of good faith emerges as an inherent limitation on contractual freedom and serves as a key instrument for achieving contractual justice. The principle of good faith is not confined to the moment of contract formation but operates throughout the entire contractual lifecycle. Its normative function is closely linked to the protection of legitimate expectations and the preservation of trust between the parties. Particularly in pre-formulated contracts, the requirement that contractual content remain within reasonable and acceptable limits necessitates judicial scrutiny grounded in good faith. Such scrutiny reflects the inevitable interaction between contractual autonomy and substantive justice. This study examines the transformative role of the principle of good faith within the tension between formal contractual freedom and material contractual justice. By analysing its interpretative, supplementary, and corrective functions, the article explores the legitimacy and scope of judicial intervention in the determination of contractual content. The analysis aims to construct a coherent theoretical framework in which good faith operates as a systematic mechanism of control, ensuring that contractual relations align not only with formal consent but also with substantive fairness.

**Keywords:** Good faith, contractual justice, formal freedom.

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## **INTRODUCTION**

The principles of good faith and the prohibition of abuse of rights constitute fundamental pillars of Turkish Civil Law, serving as essential mechanisms to ensure fairness and balance in legal relations. Regulated under Article 2 of the Turkish Civil Code, these principles establish a general standard of conduct that governs the exercise of rights and the performance of obligations. Rather than being limited to contractual relations, the good faith principle extends to all areas of private law and plays a crucial role in interpreting legal rules, filling legislative gaps, and preventing unjust outcomes.

The principle of good faith requires individuals to act in accordance with honesty, reasonableness, and socially accepted moral standards, while also respecting the legitimate expectations of others. Closely linked to this principle, the prohibition of abuse of rights prevents the exercise of legal rights in a manner that contradicts their purpose or results in unjust harm to others. In this context, even formally lawful acts may lose legal protection if they violate the underlying objectives of the legal system.

These principles gain particular importance in corporate law, especially in joint-stock companies, where the balance of interests between majority and minority shareholders must be preserved. Accordingly, the present study examines the legal nature, scope, and practical implications of good faith and the abuse of rights within Turkish law, with a specific focus on their role in corporate governance and judicial review.

### **The Rules of Good Faith and the Abuse of Rights in Turkish Civil Law**

#### **Definition and regulation in primary legislation**

The concept of good faith refers to an individual's adherence to the principle of truthfulness in their words and actions. Based on this concept, the rule of good faith, in its simplest form, establishes the standard of conduct expected of a reasonable, honest, and upright person. In legal terms, the rule of good faith is a set of norms requiring that, in the exercise of rights and the performance of obligations, actions be consistent with the law, the moral values embraced by society, customs and traditions, and the principles of truth and trust, and that the legitimate expectations of other rights holders not be undermined during this process (Antalya & Topuz, 2021; Oğuzman & Barlas, 2021).

No matter how detailed the regulations established by the legislature may be, it is impossible to regulate every single possibility regarding the exercise of rights and the fulfillment of obligations. For this reason, Article 2 of the Turkish Civil Code has been established as a general principle and plays a supplementary role in determining the standard of conduct in specific cases. When assessing whether a conduct violates the good faith rule, the established moral standards, customs, and traditions of the relevant society, as well as the purpose of the legal relationship, are taken as the basis.

In this approach, which has evolved since Roman law, the principle of good faith has been applied at times within the framework of the principle of equity (*aequitas*) and at other times within the framework of

contractual fidelity and good faith (*bona fides*). In Turkish legal scholarship, this rule is described as a dynamic structure that regulates human behavior and supplements the areas where the law falls short with humanistic and ethical values (Akyol, 2006, 2007).

The scope of application of the rules of good faith is not limited solely to the interpretation of contracts and the performance of obligations. It is observed that these rules are applied in many areas, such as the interpretation of statutory provisions, the filling of legal gaps, the prevention of fraud against the law, the adaptation of contracts, the obligation to enter into a contract, the obligation to act in good faith during contract negotiations, the determination of ancillary obligations, the proportionate exercise of rights, and even the exploitation of clearly erroneous court decisions. Additionally, situations such as the beneficiary's claims constituting an abuse of rights in letter of credit transactions are also evaluated within this scope.

Within this framework, the rules of good faith find application not only in private law but across all branches of law, including public law. Indeed, procedural law explicitly stipulates that parties are obligated to act in accordance with the rule of good faith.

The fundamental basis for the principle of good faith and the prohibition against the abuse of rights is Article 2 of the Turkish Civil Code. According to this provision, everyone is obligated to comply with the rules of good faith when exercising their rights and fulfilling their obligations; furthermore, the abuse of a right is not protected by the legal system. The first paragraph of the article regulates the principle of acting in good faith, while the second paragraph regulates the prohibition of the abuse of rights.

Although the term "principle of good faith" is used in the singular in practice, this concept actually refers to a set of rules encompassing multiple sub-principles. For this reason, the use of the term "principles of good faith" in this study is more appropriate. This is because, particularly in joint-stock companies, transactions such as capital increases may violate the principle of "reasonable exercise of rights" when they are aimed at weakening the balance of power among certain shareholders. Similarly, paying high salaries to board members despite the absence of profit distribution may be evaluated under the "prohibition of conflicting conduct."

### **Legal Characteristics of the Rules of Good Faith**

#### **Mandatory nature**

Good faith rules are, as a general rule, mandatory in nature and are applied *ex officio* by the judge. These rules contain binding standards of conduct for individuals exercising their rights and fulfilling their obligations. Accordingly, individuals are expected to act in accordance with the behavior that an average, honest, and reasonable person would exhibit under similar circumstances.

While some scholarly views argue that the rule of good faith can be waived by contract, the prevailing view acknowledges that this rule is of a mandatory nature. This is because the foundation of the rules of good faith lies in conformity with morality, and contractual provisions contrary to these rules will often constitute a

violation of personal rights or a breach of morality. Therefore, it is not possible to agree to the contrary of these rules.

The Supreme Court has also explicitly stated in its case law that the obligation to comply with the good faith rule is mandatory and that the parties cannot agree that this rule shall not apply.

### **Legal Characteristics of the Rules of Good Faith**

#### **Objectionable nature**

By virtue of their nature as matters of public order, the rules of good faith serve to protect the weaker party in legal relationships. Article 2 of the Turkish Civil Code, which forms the basis of these rules, is of a mandatory nature, and it is not possible to agree otherwise. Therefore, the judge is obligated to consider whether these rules have been complied with on his own initiative, without the need for the parties to raise the issue.

In this context, the rules of good faith and the prohibition against the abuse of rights constitute legal issues within the judicial process. Since the application of legal norms to a specific case is the judge's duty, the court may, on its own initiative, investigate whether there is any violation of these principles at any stage of the proceedings. It is not mandatory for the parties to make a separate request in this regard. This characteristic leads to the assertion of the rules of good faith being evaluated as an "objection."

Considering the provision that the general provisions of the Turkish Civil Code may be applied to all private law relationships, it is clear that the rules of good faith apply in the same manner under the law of joint-stock companies. For example, if a shareholder who voted against the appointment of a special auditor at the general meeting later applies to the court requesting a special auditor, this constitutes a violation of the rules of good faith under the prohibition against inconsistent conduct, and therefore the request must be rejected.

There are differing views on this matter in the literature. According to one view, since the rules of good faith and the prohibition against the abuse of rights constitute grounds for objection, the parties may raise them at any stage of the proceedings, and this is not subject to the prohibition against the expansion of claims and defenses (Antalya & Topuz, 2021). In contrast, another view holds that the judge may only consider grounds for objection that are clearly evident from the information and documents in the case file; the subsequent raising of an objection not included in the file is subject to limitations under procedural rules (Pekcanitez, Atalay & Özekes, 2020; Kuru, 2016).

A similar dual approach is observed in Supreme Court decisions. While some decisions accept that grounds for objection may be raised at any stage of the proceedings, more recent case law states that objections not evident from the case file cannot be considered *ex officio* by the judge if they are not raised within the prescribed time limit.

In civil procedure law, the principle of parties' presentation of grounds is fundamental; particularly in cases seeking the annulment of general assembly decisions of joint-stock companies, the parties must explicitly set forth their grounds for objection in their complaints and answers. The court may only consider objections that were not raised by the parties within the prescribed time limit and are not clearly evident from the case file on its own initiative in exceptional cases involving public order. Any other approach would be contrary to both procedural economy and the fundamental principles of private law litigation.

### **Secondary nature**

Although the rules of good faith are mandatory in nature, they cannot be directly applied to supersede other legal rules. When resolving a specific dispute, the judge is obligated to first apply the relevant statutory provisions. However, if the statutory provisions do not produce a fair result in the specific case or fail to maintain a balance of interests, the rules of good faith may be invoked.

This situation is referred to as the "secondary (subsidiary) nature" of the rule of good faith. In other words, these rules come into play only when there is no explicit provision in the law or when the existing provision is insufficient in light of the specific case. The primary principle is that the dispute must first be resolved within the framework of existing legal norms.

Attempting to apply the principles of good faith directly in every dispute would weaken the function of statutory provisions and reduce legal predictability. Therefore, these principles should only be invoked when there is a clear violation of fairness or a concrete injustice.

This approach also applies in lawsuits seeking the annulment of general assembly resolutions of joint-stock companies. The court first conducts a review of compliance with the provisions of the Turkish Commercial Code and relevant legislation. For example, a general meeting resolution that limits shareholders' right to inspect financial statements is not only contrary to the principles of good faith but also violates the mandatory provisions of the law and is subject to the direct penalty of nullity. In such a case, the primary scope of application is not the principle of good faith but the relevant provision of the special law.

Similarly, when the number of board members is determined in violation of the articles of association, the primary assessment is whether there is a violation of the law and the articles of association; the good faith rules play a secondary role.

However, in some cases, a transaction may appear formally compliant with the law but may lead to results not intended by the law in substance. For example, setting excessively high salaries for board members at the same meeting despite the general assembly's decision not to distribute profits may constitute a disguised profit distribution. In such a case, even if the transaction is formally compliant with the law, it constitutes a violation of the good faith principles and may be voidable.

Consequently, the judge must first identify and apply the specific legal norms applicable to the concrete case. However, if the application of these norms results in a clear injustice, the principles of good faith should be invoked as a last resort.

### **Legal Characteristics of the Principles of Good Faith**

#### **Objective and supplementary nature**

The rules of good faith are principles that have been adopted by society over time and are built upon objective criteria. Therefore, they express general standards of conduct applicable to everyone, independent of individuals' subjective intentions. In other words, in the application of these rules, it is not the person's inner thoughts or good or bad intentions that matter, but rather how a reasonable and honest person would act under the same circumstances.

In this context, the rules of good faith provide an objective standard of conduct. The behavior expected of individuals exercising their rights or fulfilling their obligations is that which a reasonable, average person would exhibit. Whether a person is aware of a deficiency in their own behavior or is in a position to recognize it is not decisive here, unlike the concept of good faith. Therefore, the rules of good faith form the fundamental criterion for evaluating both honest behavior and whether a right has been abused (Antalya & Topuz, 2021).

When evaluated in the context of corporations, for example, it is not a requirement that the majority shareholders have consciously acted in their own interest for a capital increase decision to be deemed contrary to the rules of good faith. Nor is it necessary for the majority to derive a direct profit or advantage from such a transaction. A decision to increase capital, made despite the company having no objective need for such an increase, may be deemed contrary to the principles of good faith and subject to annulment, even if it does not provide the majority with a concrete benefit.

Another important feature of the principles of good faith is their supplementary and explanatory function. These principles come into play when the intentions of the parties are insufficient in legal transactions, thereby addressing such deficiencies. They also play a significant role in the interpretation of contracts and in filling legal or contractual gaps.

The theory of reliance is the basis for interpreting legal transactions. Accordingly, when determining the meaning of a declaration of intent, the focus is on how the recipient should interpret it in accordance with the rules of good faith, taking into account the elements the recipient knew or should have known within the context of the specific circumstances of the case. Thus, both the recipient's reliance on this interpretation and the declarant's expectation that the declaration would be understood in this manner are safeguarded (Oğuzman & Barlas, 2021).

This approach also applies to the articles of association of joint-stock companies. It is presumed that the founding partners who draft the articles of association are experts, and they are expected to act with the

necessary care and diligence in accordance with the principles of good faith. Therefore, provisions in the articles of association that are unclear or give rise to doubt must be interpreted in favor of minority shareholders who are in a weaker position.

Although the limitations set forth in Article 340 of the Turkish Commercial Code impose a certain degree of restriction on articles of association, the principles of good faith ( ) still apply in cases of uncertainty. In such situations, the interpretation must be made against the company or the controlling shareholders and in favor of the minority shareholders. In lawsuits seeking the annulment of general assembly resolutions, the judge must also interpret the provisions of the articles of association in accordance with this principle and apply them to the specific case.

### **The Specific Regulation of the Rules in the Law**

While the principle of good faith and the prohibition against the abuse of rights—a manifestation of this principle—are regulated in Article 2 of the Turkish Civil Code, they are also specifically addressed in various statutory provisions. This demonstrates that these rules are not merely general principles but are also concretized in different areas.

Therefore, when applying the rules of good faith to a specific case, the provisions that specifically regulate these rules must be considered first. However, in cases where such specific regulations do not exist, Article 2 of the Turkish Civil Code must be consulted.

In the context of commercial law, the principle of good faith is also concretized within the framework of unfair competition provisions. Indeed, Article 54/2 of the Turkish Commercial Code states that deceptive or unethical behaviors and commercial practices that affect relationships between competitors or suppliers and customers are unlawful. Furthermore, Article 55/1-a of the same Code specifically regulates advertising and sales methods that violate the principle of good faith, listing such behaviors by way of example.

Consequently, the rules of good faith appear both as a general principle and as specific provisions in various laws. For this reason, when determining the applicable norm in a specific case, specific provisions must be considered first; where such provisions do not exist, Article 2 of the Turkish Civil Code, which serves as a general provision, must be applied.

The fact that the rules of good faith are incorporated into different laws as specific provisions not only broadens their scope of application but also necessitates a priority order regarding which provision applies in a specific case. In this context, if a specific provision exists regarding a particular legal relationship, that provision must be applied first; the general principle of good faith should only be invoked when no such provision exists.

This approach is significant for ensuring legal certainty and preserving the hierarchy of norms. For relying directly on general provisions despite the existence of specific provisions could lead to disregarding the

legislature's intent. Therefore, while the rules of good faith have a broad scope of application, they are not rules that can be applied directly and without limitation.

On the other hand, the coexistence of the rules of good faith with specific regulations also demonstrates that these rules play a supplementary role in various areas of law. In this context, it is possible to utilize the rules of good faith to fill gaps that may arise during the application of specific provisions or to interpret the provision in a manner consistent with its purpose.

### **Prohibition Against the Abuse of Rights**

The use of a right in a manner contrary to its purpose, even though it remains within legal boundaries, is defined as the abuse of a right. When evaluated alongside the rules of good faith, this situation effectively constitutes two sides of the same coin. As a result of the abuse of a right, the individual may cause harm to another or, at the very least, create a risk of harm (Oğuzman & Barlas, p. 248; Uçaryılmaz, p. 142).

This principle constitutes an objective general rule grounded in the idea of solidarity among individuals and serving social necessities. In such a case, while the individual possesses a right, they are deemed to have abused it because they used it contrary to its purpose. In this respect, it differs from unjust conduct that is not based on any right. For in unjust conduct, there is no legitimate right, even in appearance. However, in both cases, the legal system does not provide protection (Oğuzman & Barlas, p. 249).

Article 2/2 of the Turkish Civil Code establishes a prohibition in this regard. However, this prohibition applies only when the right is exercised in a manner that exceeds its ordinary and legal limits. The Swiss Civil Code also includes the term "manifest abuse," which carries a broader meaning than mere abuse or use with the intent to cause harm.

Although some scholars have argued that a right abused ceases to be a right and that rights should be divided into "core rights" and "apparent rights," the prevailing view holds that the judge should protect the non-abused portion of the right while excluding the abused portion from protection (Akyol, pp. 21–22; Kavak, p. 56).

It is not a prerequisite for the abuse of a right that actual damage be caused to the other party's property. It is sufficient that the exercise of the right be prevented, that it cause inconvenience to the other party, create difficulties for them, or give rise to a risk of harm. Furthermore, the intent to cause harm is not required (Dural & Sarı, p. 258).

The prohibition against the abuse of rights is grounded in the principles of good faith. For this reason, this prohibition possesses the nature of a superior legal rule (Akyol, p. 23). Article 2/2 of the Turkish Civil Code serves not only to interpret the law, interpret contracts, fill gaps, and apply the principle of good faith, but also has a corrective function regarding the law (Erman, 2016, p. 107).

In cases where certain statutory provisions prove inadequate or lead to results contrary to justice due to socio-economic developments, this provision comes into play to address such shortcomings (Erman, 2016, p. 108).

Like the principle of good faith, the prohibition against the abuse of rights is also considered by the judge on their own initiative.

The use of a right in a manner contrary to a legitimate interest most typically manifests in the use of the right in a futile and vexatious manner. In such cases, it is observed that the person exercising the right acts solely with the intent to harm the other party, place them in a difficult situation, or cause them distress, despite having little or no legal benefit from exercising that right (Antalya & Topuz, p. 501).

For example, a co-owner of a property establishing a usufruct right over their own share solely to reduce the property's value, without any legitimate reason, constitutes an abuse of rights (Court of Cassation 14th Civil Chamber, July 6, 2005). One of the classic examples in real estate law is a person having a wall built on their own land—a wall that provides them no benefit—solely to block their neighbor's view. This situation is also deemed an abuse of rights (Antalya & Topuz, p. 502).

Similarly, even if a usufruct right is granted over a property by contract, a usufruct holder who fails to fulfill the obligation arising from the contract due to their own fault, yet demands the continuation of this right, is also deemed to be abusing the right (Supreme Court of Appeals, 14th Civil Chamber, November 10, 2020).

The use of legal institutions for purposes other than their specific intent, or in a manner inconsistent with such intent, is not protected by the legal order. For example, even if the principal has granted the agent the authority to sell the real property at the desired price, the agent must act in accordance with the duty of objective care during the sale (Oğuzman & Barlas, p. 131).

In this context, even if the articles of association or a general meeting resolution grants board members the authority to sell the company's real estate at any price they deem appropriate, they are still required to act within the framework of the agent's duty of care under Article 506 of the Turkish Code of Obligations. Board members may not transfer real estate at a price significantly below its market value in a manner that would cause harm to the company. Otherwise, liability arises under Article 555/1 of the Turkish Commercial Code toward the company and its shareholders.

In this situation, it is not possible for members of the board of directors to rely on the defense that they have been granted unlimited authority. Such a defense is not protected under the prohibition against the abuse of rights. In joint-stock companies, the conduct of general meetings in violation of the principles of good faith, with the aim of eliminating or restricting shareholders' statutory rights without just cause, may also be considered within this scope.

For example, even though the company conducts all its commercial activities in Istanbul, a decision to relocate the company's headquarters to Kahramanmaraş without any valid and reasonable justification, with the aim of

making it difficult for shareholders to participate in the general meeting and exercise their other rights, may be characterized as an abuse of rights.

### **Forms of the Prohibition Against Abuse Of Rights**

#### **Exercise of a right contrary to a legitimate interest**

The exercise of a right in a manner contrary to a legitimate interest, even if it remains within legal boundaries, is considered an abuse of rights. This situation is most clearly evident when the right is exercised in a manner that is pointless and causes distress to the other party (Antalya & Topuz, p. 501).

In such cases, it is observed that the person exercising the right has little or no benefit from doing so, yet their primary purpose is to harm the other party, place them in a difficult situation, or cause them distress.

For example, a co-owner of a property establishing a usufruct right over their own share solely to reduce the property's value, without a valid reason, constitutes an abuse of rights (Court of Cassation 14th Civil Chamber, July 6, 2005).

Similarly, having a wall built on one's own land—which provides no benefit to the owner—solely to obstruct a neighbor's view is also considered an abuse of rights (Antalya & Topuz, p. 502).

#### **Misuse of legal institutions**

The use of legal institutions for purposes other than their inherent purpose, or in a manner inconsistent with such purpose, is not protected by the legal system (Oğuzman & Barlas, p. 131). In this context, even if the principal has granted the agent the authority to sell the real property at the desired price, the agent must act in accordance with the duty of objective care during the sale.

Similarly, in joint-stock companies, even if the articles of incorporation or a general meeting resolution grants the board of directors the authority to sell company real estate at any price they deem appropriate, the agent's duty of care continues under Article 506 of the Turkish Code of Obligations.

For this reason, board members cannot transfer real estate at a price significantly below its market value in a manner that would cause harm to the company. Otherwise, liability arises under Article 555/1 of the Turkish Commercial Code. In such cases, board members cannot rely on the defense that they were granted unlimited authority; this defense is not protected under the prohibition against the abuse of rights.

#### **Excessive Disproportion Between Benefit and Harm**

As a general rule, no one is required to calculate the benefit they will obtain by exercising their legal right against the potential harm the other party may suffer (Oğuzman & Barlas, p. 255; Antalya & Topuz, p. 513).

However, if there is a clear disproportion between the benefit to be obtained and the harm the other party will suffer, it may be deemed an abuse of rights (Dural & Sari, p. 259).

An example of this situation is when, despite the existence of an economic strengthening objective that could be achieved through a capital increase at a lower rate, an excessive increase is pursued, thereby undermining the shareholders' positions within the company.

### **Abuse of a Right**

A right is a legally protected interest for which the holder is granted the authority to benefit from such protection (Oğuzman & Barlas, p. 131). If a right is exercised in a manner contrary to its purpose and without a legitimate interest worthy of protection, such exercise should not be protected (Akyol, p. 23). Therefore, when a right is exercised contrary to its intended purpose and the user lacks an interest or such interest is very limited, the abuse of the right occurs.

Examples include: the exercise of a right that does not benefit the user, contradictory conduct, a conflict of interests, the careless exercise of a right, the unjust acquisition of a right, the unjust assertion of the statute of limitations, the assertion of a lack of formal requirements in a contract, the demand for the return of a thing, and the exploitation of a court or general assembly decision that is objectively incorrect (Akyol, p. 104 ff.).

If there is no distributable profit remaining after deducting prior-year losses and no free reserve exists, the demand for a dividend following a distribution decision based solely on the profit of the relevant period may be evaluated as an abuse of rights.

In this case, the decision in question is void under Article 447/1-c of the Turkish Commercial Code due to its conflict with the fundamental structure of the joint-stock company or the provisions regarding the protection of capital. Nevertheless, demanding the implementation of this decision constitutes an abuse of rights.

Indeed, the Court of Cassation has held that the board of directors' refusal to implement a general meeting resolution that is objectively void is justified (Court of Cassation 11th Civil Chamber, June 26, 2014).

### ***Creating a Reliance That the Right Will Not Be Exercised (Contradictory Conduct)***

As a general rule, individuals are not obligated to consistently act in the same manner. However, after a person has created a reasonable expectation in the other party that they will act in a certain manner, engaging in conduct that is inconsistent with and contradicts that expectation may, in certain circumstances, result in the abuse of rights. Once a reasonable expectation has been created in the other party that a certain behavior will continue, acting in a manner inconsistent with that expectation and thereby placing the other party in a legally disadvantageous position is not protected by the legal system (Antalya & Topuz, p. 516). In this context, the trust in question must pertain to the expectation that a specific behavior will continue. In other words, the

other party must believe that the other person will continue to act in the same manner and maintain that behavior in the future (Giritlioğlu, p. 88).

The manner in which the reliance arose is irrelevant. This reliance may have arisen through the transmission of information, the display of conduct that cannot be characterized as an expression of intent, or the adoption of a specific legal opinion (Giritlioğlu, p. 88). In this context, it is not necessary for the person to act with the intent to deceive the other party (Helvacı & Topuz, 2022, p. 118). However, the prior conduct must be of a nature that can be attributed to the person who placed trust.

In assessing contradictory conduct, the good faith of the trusting party is a fundamental condition. The trusting party cannot foresee that the other party will exhibit contradictory conduct in the future, nor can they be expected to make preparations accordingly (Akyol, p. 18). If the party engaging in inconsistent behavior abuses the trust placed in them by the other party, the principle of “*venire contra factum proprium*” applies to them (Akyol, 2006, p. 77). This principle serves as a sanction against the person whose behavior contradicts their prior conduct. However, for this sanction to be applied, the other party must have a protectable interest (Akyol, p. 19). The conduct that inspires trust need not necessarily constitute a legal transaction. Therefore, it is possible for minors with the capacity to discern to also create trust in the other party (Giritlioğlu, p. 88). In legal relationships established among multiple parties, conduct directed at one of these parties may also produce consequences for the others. The principle of good faith and the prohibition against contradictory conduct are interrelated concepts; where good faith is absent, there can be no question of contradiction (Giritlioğlu, p. 88).

In German law, there are views that the elements of fault or immorality need not be established for the application of the prohibition against conflicting conduct. In contrast, in Turkish legal doctrine, Akyol states that for conflicting conduct to produce consequences, not only objective conditions but also the element of fault must be present. In this context, it is argued that for contradictory conduct to arise, in addition to objective conditions such as the existence of prior conduct, the formation of trust in the other party, the trust being worthy of protection, and the trusting party suffering harm, the element of fault must also be present (Akyol, p. 17). According to Akyol, if the person exhibiting contradictory behavior is a minor with the capacity to discern, the minor’s protection must take precedence in such cases. Therefore, a person entering into a transaction with a minor who has the capacity to discern cannot always claim that their own interests are worthy of protection. However, in transactions involving a minor with the capacity to discern, the assessment must be made while considering the balance of interests between the parties. In this context, whether the prohibition against inconsistent conduct applies must be determined by considering whether the party relying on the conduct exercised the due diligence required by commercial practice.

The party who is the counterpart of the person whose conduct conflicts with their prior behavior, and who relies on that conduct, must act with due care and good faith. A person who knows or should have known that the other party would act in a contradictory manner cannot be said to have acted in good faith.

Similarly, if the other party, despite the likelihood of inconsistent conduct given the course of events, the information they possess, and their experience, still places trust in the other party and acts in accordance with that trust, they cannot benefit from the inconsistent conduct. If the party subjected to the contradictory conduct is grossly negligent in failing to be aware of this situation, they cannot take advantage of it either (Akyol, p. 19). The exercise of a right is not, as a general rule, mandatory at the moment it arises or shortly thereafter (Gökyayla, 2007, p. 414).

As a general rule, the holder of a right cannot be compelled regarding whether or how the right will be exercised. Silence, as a general rule, cannot be interpreted as an expression of intent. However, in certain exceptional cases, and particularly in accordance with statutory provisions, silence may be accepted as an expression of intent. Unless otherwise provided by law or contract, silence is generally not interpreted as an expression of intent. However, the exercise of a right after a long period of time, giving the impression that the right has been waived, may constitute a breach of the trust established in the other party. Once a certain sense of reliance has been established in the other party, acting in a manner inconsistent with that reliance or exhibiting new conduct that completely contradicts prior behavior is not protected by the legal system. In other words, if the holder of a right has indicated through prior conduct that they would not exercise that right, or if such a conclusion can be drawn within the framework of the rules of good faith, the subsequent exercise of the right in a manner inconsistent with that prior conduct is deemed an abuse of rights (Akyol, p. 63).

## **CONCLUSION**

The rules of good faith and the prohibition against the abuse of rights are not merely theoretical principles within the framework of Turkish Civil Law; they constitute fundamental norms that ensure legal relationships are conducted in a healthy and balanced manner. These principles, established in Article 2 of the Turkish Civil Code, provide an objective standard that limits individuals' conduct in the exercise of rights and the performance of obligations; simultaneously, they serve a complementary function aimed at addressing the injustices that may arise from the rigid and formal rules of the legal system.

Due to their mandatory nature, the rules of good faith take precedence over the parties' intentions and are applied *ex officio* by the judge. In this regard, these rules are incorporated into the judicial process without the need for the parties to explicitly invoke them, and they serve particularly to protect the weaker party. However, the direct and unrestricted application of these rules is not in question. Given the secondary nature of the rules of good faith, priority must first be given to the specific private law norms applicable to the concrete case; however, recourse to the rules of good faith is necessary only when these norms prove insufficient or lead to a clear violation of equity. This approach is significant both for preserving the hierarchy of norms and for ensuring legal certainty.

The prohibition against the abuse of rights, however, constitutes a concrete manifestation of the principles of good faith. The fact that a right is exercised within legally recognized boundaries does not mean that it will be

protected by the legal order in every instance. If a right is exercised in a manner contrary to its purpose—such as to harm the other party, place them in a difficult situation, or disrupt the legal balance—such exercise is not protected by the legal order. In this context, the abuse of a right may manifest in various forms, such as use contrary to a legitimate interest, misuse of legal institutions, a clear disproportion between benefit and harm, and contradictory conduct.

Particularly in the law of corporations, given the balance of power among shareholders, the scope of application of the principles of good faith and the prohibition against the abuse of rights becomes even more significant. These principles play a decisive role in situations where majority shareholders use their voting power against the minority, where general meeting decisions, while formally compliant with the law, result in outcomes contrary to fairness, or where practices are adopted that make it difficult for shareholders to exercise their rights. In this regard, these rules contribute to safeguarding the balance of interests within the company and strengthening the concept of corporate governance.

In conclusion, the principles of good faith and the prohibition against the abuse of rights are fundamental principles that reflect not only the normative but also the ethical and social dimensions of the legal order. In applying these principles to specific cases, it is essential for the judge to conduct a careful and balanced assessment, both to ensure legal predictability and to uphold justice. In this context, these rules must not be interpreted either too broadly or too narrowly; rather, they must be applied by taking into account the specific characteristics of each individual case.

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