

Franchise Contracts under Turkish Law: A Doctrinal Investigation

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DOI: <http://dx.doi.org/10.18196/iclr.v7i1.23661>

Abstract

Franchise contract refers to contract in which the franchisor gives the franchise system to the franchisee and in return, the franchisee is under certain obligations and pays a fee. Although franchise contracts have been very common in practice, nevertheless, these contracts are not regulated by any legislation in Turkey. This study examines franchise agreements in the light of Turkish law within the framework of doctrinal opinions. In the absence of specific legislation, this doctrinal research relies on secondary materials. It is found that franchise contract is commutative in nature which imposes mutual obligation on the contracting parties. The franchisor has the obligation to inform about the content of the franchise system in pre-contractual period, to provide the franchise system smoothly and to support the franchisee. The franchisee, on the other side, has the obligation to market the goods or services, to enjoy the franchise system, to tolerate supervision and to comply with instructions, to pay remuneration.

Keywords: Contract, Franchise, Franchisor, Franchisee, Turkey.

1. Introduction

The word “franchise” was derived from the old French, means “freedom” or “privilege.” Recently, it refers to a business model that has special characteristics.¹ Franchise involves a collaboration of two parties based on a contract commonly known as franchise contract. The parties to the contract are the franchisor and the franchisee. The former refers to the owner of the franchise system, and the latter refers to the business partner.

As a bilateral contract, franchise imposes mutual obligations on the contracting parties. In a franchise contract, the franchisor grants the franchisee the right to use a brand, business processes and business model. In this way, the franchisee sells products or provides services under certain conditions. As such, franchise offers mutual benefit. It allows the franchisor to broaden the franchise network to enter into foreign markets as well as to get permanent royalties without investment efforts.² On the other side, it allows the franchisee to use the

¹ Tajuddin Noor, The Comparative Law of Franchise Agreements in Realizing Protection Between Parties', *Jurnal Pembaharuan Hukum*, 19.2 (2023), p. 307 <<http://dx.doi.org/10.26532/jph.v10i2.33355>>.

² Dumitrita Florea and Narcisa Gales, 'Franchise Contract in International Trade Law', *European Journal of Law and Public Administration*, 9.2 (2022), p. 14 <<https://doi.org/10.18662/eljpa/9.2/178>>.

franchise system and the tested business plan. Not only lessens the risk, it also allows the franchisee to enjoys certain level of independence.³

While, its origin goes back to middle ages,⁴ franchise was very famous in the mid of 20th century in North America and has gained its popularity in Turkey since the 1970s. As a matter of fact, franchise contract is not regulated in the legislation of many legal systems applying civil law. Likewise, it is not a contract regulated in Turkish legislation. This type of contract is considered valid by virtue of the freedom of contract, which is the basic principle of contract law.⁵

The franchise contract cannot be separated from the contract law principles.⁶ Since it is a type of contract that is not regulated in Turkish legislation, it is considered as an innominate contract. As such, the content of this type of contract is determined by the doctrines.

2. Method

The type of research is normative legal research. also known as doctrinal research. This doctrinal research relies on secondary data, in the form of legal materials. In the absence of specific legislation governing franchise contract in Turkey, the study examines secondary legal materials, especially thesis and journals. These legal materials were collected through library based study.

3. Discussion and Analysis

3.1. The Nature of Franchise Contract

3.1.1. Innominate Contract

Nominate contracts refer to contracts that are regulated by the legislation and organized under a certain name. Sales, lease and service contracts for examples, are nominate contracts under the Special Provisions of the New Turkish Obligation Code. Nominate contracts have special rules determined by the legislation. Innominate contracts, on the other hand, are not regulated by the legislation and therefore do not have specific rules. As a result, general contract rules apply to innominate contract,⁷ including franchise contracts.

3.1.2. Creating a Continuing Obligation Relationship

Franchise contracts contain a continuing obligation relationship. In such contracts, the parties do not fulfill their obligations immediately or in a certain period of time with a single act. The parties fulfill their obligations one by one with continuous acts or repeated acts at certain period throughout the term of the contract. The obligors are under an uninterrupted obligation to perform or endure for a definite or indefinite period of time. In continuing

³ Robert W. Emerson, 'Franchise Contracts and Territoriality: A French Comparison', *Entrepreneurial Business Law Journal*, 3.2 (2009), p. 330. Available in SSRN: <https://ssrn.com/abstract=2705056>.

⁴ Ergysa Ikonimi, 'Franchise Contract and Good Faith', *Mediterranean Journal of Social Sciences MCSER Publishing*, 5.22 (2014), 313-19 (p. 313) <<http://dx.doi.org/10.5901/mjss.2014.v5n22p313>>.

⁵ Sisca Ferawati Burhanuddin, 'Franchise Agreement in Civil Law Perspective', *Enrichment: Journal of Management*, 12.1 (2021), p. 40 <<https://doi.org/10.35335/enrichment.v12i1.153>>.

⁶ Lina Maulidiana, 'Implementation of Franchise Agreement Perspective in Contract Law', *International Journal of Social Sciences and Development*, 1.1 (2017), p. 62. <<https://doi.org/10.24967/saburajss.v1i1.37>>.

⁷ Ammar Abdulsattar Jabbar, 'Irak ve Mısır Hukukunda Franchise Sözleşmesi' (Selçuk University Social Science Institute, 2018), p. 14-15.

obligation relationships, a process is necessary for the realization of the creditor's interest. Therefore, they are completely different from contracts with instantaneous performance where the fulfillment of the performance and the termination of the obligation occur at the same time.⁸

In franchise contract, the franchisee undertakes the obligation to increase the marketing of the goods and/or services subject to the contract. In the meantime, the franchisor is obliged to continuously assist and support the franchisee and to tolerate the use of its industrial rights such as its trademark or emblem. Here, the parties are in a continuous obligation relationship.⁹ Sudden performance obligations may be found in franchise contracts. For example, payment of the fee. This does not eliminate the continuing obligation relationship.¹⁰

3.1.3. Framework Contract

Franchise contracts are framework contracts. Framework contracts are entered into by parties who then intend to enter into multiple contracts. The parties set out the general principles of how they will shape their relationship in the future. It specifies what is important to them. Through this contract, the parties set out the general terms for each of their future contracts.¹¹

Framework contracts are not preliminary contracts. With a preliminary contract, the parties enter into an obligation for the relevant agreements to be concluded in the future. Accordingly, if one party refrains from entering into the relevant contract, the other party may force the other party to enter into the contract. A framework contract forms the basis for the relevant contract to be concluded, but does not oblige the parties to conclude a contract on the relevant subject.¹²

3.1.4. Standard Contract

Franchise contracts contain standard contractual provisions. Organizations that will make many contracts with similar content prepare standard contracts with fixed provisions. Thus, they save time in the course of pre-contractual negotiations. By signing contracts with more than one person on the same subject, they provide a standard in their legal relations. In standard contracts, there are very few provisions specific to the signed contract, such as date, amount and contract price. The remaining provisions are standard provisions as in other contracts.¹³ By utilizing the standard contract, the franchisor can save money and time.¹⁴ As a result, the franchisor does not enter into different contracts with other franchisees. In order to

⁸ Zeynep Tuzlu, 'Franchise Sözleşmesinin Sona Ermesi ve Sonuçları' (Dokuz Eylül University Social Science Institute, 2012), p. 6.

⁹ Zeliha Torun, 'Rekabet Hukuku Açısından Franchise Sözleşmelerinin İncelenmesi' (Çankaya University Social Science Institute, 2012), p. 10.

¹⁰ Zeliha Torun, Rekabet Hukuku Açısından Franchise Sözleşmelerinin İncelenmesi, p. 11.

¹¹ Gözde Merve Üçler, 'Türk Hukukunda Franchise Sözleşmeleri' (Dokuz Eylül University Institute of Social Sciences, 2023, p. 62.

¹² Gözde Merve Üçler, Türk Hukukunda Franchise Sözleşmeleri, p. 62, 63.

¹³ Fatma Yavuz, 'Franchise Sözleşmelerinde Franchise Alanın Hak ve Yükümlülükleri' (Gazi Üniversitesi Social Science Institute, 2015), p. 61.

¹⁴ Dharu Triasih and Dewi Tuti Muryati, 'Legal Protection of the Parties In The Franchise Agreement, Advances in Social Science', *Education and Humanities Research*, 499, presented in 2nd International Conference on Law, Governance and Social Justice, Atlantis Press, 2020, 418-26 (p. 420) <<https://doi.org/10.2991/assehr.k.201209.321>>.

sustain the reputation and identity of the network, it is obliged not to change the contractual terms depending on the negotiations with each franchisee.¹⁵

3.1.5. Commutative Contract

Franchise contract is commutative contract because basically, in trade, which is based on competition and profit, there is no gratuitous or free contract.¹⁶ Franchise contracts are contracts that impose mutual obligations on the parties.

The obligations of the franchisor are: (1) to inform the franchise system before contracting; (2) to use the franchise system; and (3) to protect and support the franchisee.¹⁷ While the obligations of the franchisee are: (1) to release the goods or services; (2) to use the franchise system; (3) to endure supervision and comply with instructions; (4) to pay wages; and (5) to maintain the loyalty.¹⁸

3.1.5.1. Obligations of the Franchisor

3.1.5.1.1. Obligation to Inform the franchise system before entering the Contract

The principle of honesty ("objective good faith") is recognized in the introduction section of the Turkish Civil Code. Pursuant to this principle, a trust relationship is established between the parties in the course of pre-contractual negotiations. During these negotiations, the parties are obliged to inform and enlighten each other. In this process, the parties are obliged to provide each other with the necessary information.¹⁹ In accordance with this obligation, the franchisor must inform the franchisee about the amount of investment required for the establishment of the business, the method and time of payment, the methods of conducting business activities, the support and assistance to be provided throughout the contract, obligations, advertising expenses and possible results.²⁰ In addition, the franchisor must adequately inform the franchisee about the obligations of the parties, the operation of the system and the financial statements. The reason why the franchisor has this obligation is that the franchisor has the knowledge on the subject and franchise agreements are standard contracts prepared by the franchisor. In this way, the franchisee will be able to consider the risk of the investment.²¹

3.1.5.1.2. Obligation to Use the Franchise System

The franchise system consists of various elements such as trademarks, patents, know-how and business names. In order to operate the franchise system, the franchisor must offer the use of the intangible goods included in the franchise system. This is an essential obligation of the franchisor. Thus, the franchisor and the franchisee are integrated with each other.

¹⁵ Paul Bogdan Zamfir, 'Franchise A Potential Solution for Achieving Business Success', *Annals of the "Constantin Brancusi" University of Targu Jiu Economy Series*, 6 (2018), 119-124 (p. 121).

¹⁶ Alireza Azadi Kalkoshki, Mohsen Hossein Abadi, 'Franchise Contract in International Business Law', *Revista de Direito da Cidade*, 11.2 (2019), 257-77, (p. 272)
<<https://doi.org/10.12957/rdc.2019.38084>>

¹⁷ Alan Rachman, Daniel Hendrawan, Legal Protection of Brand Rights for Franchise Agreements in Indonesia, *Journal of Advances in Humanities and Social Sciences*, Volume:7, Issue:3, 2021, page 74.

¹⁸ Alan Rachman, Daniel Hendrawan, Legal Protection of Brand Rights for Franchise Agreements in Indonesia, page 74.

¹⁹ Gözde Merve Üçler, *Türk Hukukunda Franchise Sözleşmeleri*, page 86.

²⁰ Gözde Merve Üçler, *Türk Hukukunda Franchise Sözleşmeleri*, pages 86, 87.

²¹ Gözde Merve Üçler, *Türk Hukukunda Franchise Sözleşmeleri*, page 87.

Moreover, the franchisor offers its experience of the system it has developed for the benefit of the franchisee.²²

3.1.5.1.3. Obligation to Support the Franchisee

We have already mentioned that the franchise contract requires close cooperation between parties. As part of this cooperation, the franchisor is obliged to support the franchisee in some points as follows:

First, the franchisor is obliged to support the franchisee in the establishment phase of the business. For example, the franchisor should share with the franchisee its analysis and description of the location where the business will be established.²³ In this regard, the opening of a luxury clothing brand on a popular street of a city can be described.²⁴ Instructions can be given on the design and business concept of the store to be opened.²⁵

Secondly, a franchise contract creates a continuing relationship between the parties. Therefore, it is not enough for the franchisee and its workers to be trained once initially. It is the responsibility of the franchisor to continue the training of the franchisee and its workers according to changing conditions, market trends and technology. This training and information should be repeated from time to time to facilitate the work of the franchisee.²⁶

Thirdly, the franchisor may advertise in national or international arenas for the recognition of the franchise system. Advertising is the element that increases the recognition of the franchise system and makes its image stronger. The franchise systems that the franchisee wants to be involved in are generally those with high recognition and a strong image. By being included in this franchise system, the franchisee aims to gain profit by taking less risk.²⁷

Fourthly, the quality of franchise system falls on the liability of the franchisor because he must monitor organization and operations of the franchise system. He must control quality of the franchisee goods and services so as to help franchisee to accomplish the expected business outcomes.²⁸ Therefore, it may be considered part of the obligation to support franchisee because the franchisee earns money thanks to the quality of franchise system.

3.1.5.2. Obligations of the Franchisee

3.1.5.2.1. Making the Release of Goods or Services in Person

The purpose of the franchise contract is to release the goods or services subject to the agreement to third parties. In order to realize this purpose, the franchisee is obliged to market the goods or services by actively operating in its own business.²⁹

While marketing the goods or services, the franchisee sells the goods subject to the contract and provides services. While doing these, it equips its business according to the

²² Kırca, a.g.e., p. 114; Hasan Levent Yüksel, Franchise Sözleşmesinin Genel Olarak İncelenmesi İfası ve Sona Ermesi, ' (, Istanbul University Institute of Social Sciences, 2013, page 62.

²³ Mehmet Ali Çakı, Hukuksal Açidan Franchise Sözleşmeleri, ' (, Dokuz Eylül University Institute of Social Sciences, 2021, page 76.

²⁴ Mehmet Ali Çakı, Hukuksal Açidan Franchise Sözleşmeleri, page 77.

²⁵ Mehmet Ali Çakı, Hukuksal Açidan Franchise Sözleşmeleri, page 77.

²⁶ Mehmet Ali Çakı, Hukuksal Açidan Franchise Sözleşmeleri, page 77.

²⁷ Onur Saral, Franchise Sözleşmeleri, ' (, Bahçeşehir University Institute of Social Sciences, 2020, page 80.

²⁸ Ana Covic, Aleksandra Daria Petrovic, Andrijana Covic Ilıc, Franchise Agreement and the Mutual Obligations Between the Franchisor and the Franchisee, Middle East Journal of Scientific Research, Number:8, Volume:27, 2019, page 581.

²⁹ Çiğdem Kırca, Franchise Sözleşmesi, Doctoral Thesis, Ankara University Institute of Social Sciences, 1996, page 168.

principles and instructions determined by the franchisor. The franchisee should hire the necessary personnel, allows the staff and him or herself to be trained by the franchisor, and engages in regional advertising. In regard to the franchise product, the franchisee keeps sufficient goods in its business so as not to disrupt sales. Thus, the franchisee increases sales in accordance with the franchise system. However, the franchisee is not obliged to reach a certain turnover while the goods and services are being released. This is because the increase in circulation and sales does not depend solely on the franchisee's activities. It also depends on the general conditions of the market and the fulfillment of the franchisor's obligations.³⁰

Activities such as advertising, promotion and marketing that will arouse the desire of customers to buy are effective in increasing sales. For this reason, if the franchisee is going to advertise locally, it is obliged to conduct market research to determine customer trends and needs. While the franchisor does the national and international advertising, the franchisee can do local advertising for its own territory. How these advertisements will be made and how much of the franchisee's turnover the franchisee will allocate to advertisements are usually determined in the contracts.³¹ The franchisee plans local advertisements according to the characteristics of that region. However, in order to ensure the uniformity of the franchise system, these advertisements require the approval of the franchisor.³²

3.1.5.2.2. Obligation to Use the Franchise System

The franchisee is obliged to use the intangible goods such as name, trademark, sign, know-how in the franchise system provided by the franchisor. Franchisees are obliged to use intangible goods to create a single image. It is in the interest of the parties to the franchise contract to use these intangibles as part of the franchise system. Therefore, the franchisee cannot assert a right not to use the intangibles offered to it. If the franchisee does not use such intangible goods, the sale of the franchised goods and services will not be carried out properly. As a result, the franchisor will suffer damage.³³ In order to fulfill this obligation, the franchisee must keep the franchisor's business name and identifying signs in visible places of its business. The franchisee must use the brand and emblem of the franchisor in the sale of goods or services. The franchisee must utilize the contractual know-how data in the production of goods and services. After the franchisee prepares the goods, the franchisee must keep the business name, trademark or symbol on the goods. The franchisee must emphasize the franchisor's business name. In doing so, the franchisee must conceal its own trade name.³⁴ If the franchisee does not fulfill this obligation, the image of unity and integrity of the franchise system will be disrupted.³⁵ As a result, the nature of the franchised system is the uniformity of products and presentation with a single trade name or trademark in appearance.³⁶

3.1.5.2.3. Enduring Inspection and Following Instructions

The franchisee has an obligation to submit to the franchisor's control and to follow its instructions. The franchisee does not have the freedom to act as having a personal business

³⁰ Çiğdem Kırca, *Franchise Sözleşmesi*, page 169.

³¹ Çiğdem Kırca, *Franchise Sözleşmesi*, page 170.

³² Çiğdem Kırca, *Franchise Sözleşmesi*, page 170.

³³ Çiğdem Kırca, *Franchise Sözleşmesi*, page 172.

³⁴ Bauder, p. 207; Çiğdem Kırca, *Franchise Sözleşmesi*, pages 173-174.

³⁵ Çiğdem Kırca, *Franchise Sözleşmesi*, page 174.

³⁶ Alireza Azadi Kalkoshki and Mohsen Hossein Abadi, 'Franchise Contract in International Business Law', *Revista de Direito da Cidade*, 11.2 (2019), 257-77 (p. 270) <<https://doi.org/10.12957/rdc.2019.38084>>.

completely.³⁷ In the franchise contract, the franchisor sets out certain principles to promote its business policy and protect its brand. The franchisee has an obligation to submit to the franchisor's control and to follow its instructions. In the franchise agreement, the franchisor sets out certain principles to promote its business policy and protect its brand. The franchisor offers the franchisee the opportunity to use these principles through training, business manuals and information meetings. The franchisee has the obligation to act in accordance with the principles set by the franchisor. Therefore, the franchisee has an obligation to endure these controls. For example, the franchisor may inspect the franchisee on the staff dress code profile.³⁸ This situation is very important for franchisee. Enduring inspection and following the instruction is vital for a tested business plan. Therefore, it should be noted that franchisee should endure inspection and follow the instruction since receiving support and training from the franchisor improves entrepreneurial skills of the franchisee.³⁹

The instructions of the franchisor must be related to the nature of the products or services that are the subject of the franchise agreement. The franchisor's intervention in the affairs outside the franchise system in matters directly related to the franchisee's internal relations is considered as a breach of contract.⁴⁰

3.1.5.2.4. Fee Payment

The franchisee cannot, of course, use the franchise system free of charge because the franchise system contains the franchisor's trademark rights, trade secrets, production methods and techniques. Utilizing these without paying a fee in any way creates unfair competition among competitors in the market. For this reason, the franchisee is obliged to pay the franchisor the fee, which is an element of the contract.⁴¹

3.1.5.2.5. Protection of Franchisor's Interests and Loyalty Obligation

In a franchise contract, a trust relationship is established between the parties. This trust relationship starts in the course of the pre-contractual term and becomes stronger after the contract is concluded. As a result of the close bond between the parties, the franchisee learns even the methods that the franchisor keeps secret. The franchisee cannot share these with third parties. Due to the vertical relationship between the parties, the franchisee is under a duty of loyalty to the franchisor and is obliged to protect certain interests of the franchisor.⁴² This situation gives rise to further obligations of the franchisee, namely: (a) non-competition obligation; (b) confidentiality obligation; (c) obligation to personally fulfill contractual obligations; and (d) information and accountability obligation to the franchisor.⁴³

³⁷ Mohammad Mehdipour and Parviz Bagheri, *The Franchise Agreement in International Trade: Its Advantages and Disadvantages*, *Cuestiones Politicas*, Vol.39, No:69, 2021, page 311.

³⁸ Burcu İrge Erdoğan, 'Milletlerarası Özel Hukukta Franchise Sözleşmesine Uygulanacak Hukuk' (Kocaeli University Social Science Institute, 2016), p. 42.

³⁹ Erkinov Bekzod Khisrovovich, *Normative – Legal Regulation of the Franchise Agreement*, *Scientific Impulse*, Vol:1, No:11, 2023, page 73.

⁴⁰ Burcu İrge Erdoğan, *Milletlerarası Özel Hukukta Franchise Sözleşmesine Uygulanacak Hukuk*, p. 42, 43.

⁴¹ Burcu Boso, *Rekabet Hukuku Açısından Franchise Sözleşmeleri* (Galatasaray University Social Science Institute, 2006, p. 37.

⁴² Ayşe Güvercin Şahan, *Milletlerarası Özel Hukukta Franchise Sözleşmeleri*, *Doctoral Thesis*, İstanbul University Social Science Institute, 2018, p. 35.

⁴³ Buse Naz Büyükkalay, *Franchise Sözleşmesi ve Uygulamadaki Önemi*, (, İstanbul Aydın University Postgraduate Education Institute, 2022, p. 101.

3.1.5.2.6. Non-Competition Obligation

In the franchise contract, the parties agree on competitive cooperation. As a result, the parties have the same marketing objectives, sales strategies, goods and/or services and are part of the same advertising campaigns. Competitive cooperation is hidden in the close relationship between the parties and the dynamics of the franchise system. Therefore, the non-competition obligation arises as a result of the close economic relationship between the parties and the principle of honesty, even if it is not separately stated in the agreement.⁴⁴ In this context, the franchisee must keep its own interests within the scope of competition cooperation. The franchisee cannot use the franchise system independently of the franchisor.⁴⁵

3.1.5.2.7. Confidentiality Obligation

Through the franchise process, the franchisee knows the franchisor's secrets. Keeping these secrets confidential is the result of the trust relationship. If these secrets are revealed, the franchise system will lose its features. Therefore, the franchisee is under an obligation to keep secrets. The concept of secrets is not limited to fabrication, marketing and trade secrets. The franchisee must also keep the franchisor's general knowledge and experience confidential.⁴⁶ Then, this information is not easily accessible by everyone in the relevant field without any effort.⁴⁷

3.1.5.2.8. Obligation to Fulfill Contractual Obligations Personally

The franchisee is obliged to personally fulfill its obligations arising from the franchise contract. In franchise contract, the rights and obligations of the franchisee arising under the contract are non-transferable rights and obligations due to the nature of the business. The right to use the intangible goods of the franchisor and to integrate into its franchise system is strictly bound to the franchisee as long as the contract continues.⁴⁸ As mentioned above, the franchise system is a system containing trade secrets. Therefore, the transfer of these contractual rights and obligations of the franchisee to third parties is void.⁴⁹ In other words, the franchisor is not obliged to tolerate the use of the franchise system by a third party.⁵⁰ If the franchisee makes its contractual rights and obligations available to a third party, then there is a breach of the franchise agreement.

3.1.5.2.8. Obligation to Inform and Account to the Franchisor

The franchisee is under the obligation to inform and account to the franchisor on various issues. The franchisee is obliged to inform the franchisor about customer information, turnover of the business, developments in the market, product quantity and other such issues. The franchisee may even be required to submit its commercial books in this regard.⁵¹ If the franchisee violates the obligation to provide information and accountability, the franchisor will not be aware of the franchisee's business earnings, market conditions and developments in the region. This situation will cause damage to the relationship of trust between the parties. The franchisor may indemnify the damage incurred by the franchisee in the event that the

⁴⁴ Buse Naz Büyükkalay, *Franchise Sözleşmesi ve Uygulamadaki Önemi*, p. 101, 102.

⁴⁵ Buse Naz Büyükkalay, *Franchise Sözleşmesi ve Uygulamadaki Önemi*, p. 102.

⁴⁶ Torun, p. 47; Ayşe Tuğba Altıntaş, *Franchise Sözleşmesinde Tarafların Borçları*, ' (, Ankara University Institute of Social Sciences, 2019, p. 135.

⁴⁷ Ayata, p. 107; Ayşe Tuğba Altıntaş, *Franchise Sözleşmesinde Tarafların Borçları*, p. 135.

⁴⁸ Ayata, p. 110; Fatma Yavuz, *Franchise Sözleşmelerinde Franchise Alanın Hak ve Yükümlülükleri*, p. 142.

⁴⁹ Tandoğan, 2010, p. 465; Fatma Yavuz, *Franchise Sözleşmelerinde Franchise Alanın Hak ve Yükümlülükleri*, p. 142.

⁵⁰ Fatma Yavuz, *Franchise Sözleşmelerinde Franchise Alanın Hak ve Yükümlülükleri*, p. 142.

⁵¹ Kırca, p. 164; Onur Saral, *Franchise Sözleşmeleri*, p. 103.

franchisee breaches this obligation. In fact, the franchisor may terminate the agreement for just cause if the relationship of trust between them is shaken.⁵²

3.2. Elements of the Franchise Agreement

3.2.1. Vertical Coordination

Vertical contracts are contracts between entrepreneurs operating at different economic levels. Horizontal contracts are usually signed between entrepreneurs at the same economic level.⁵³ In a franchise agreement, there are two different parties with different economic power. These parties come together for the release of the goods and/or services subject to the contract to the market from different dimensions. For this reason, there is a vertical cooperation between the parties, not a horizontal one. There is no partnership in this cooperation. Cooperation consists of a contract that imposes obligations on both parties.⁵⁴

Franchisees form a group against their competitors in the market with their franchise agreement. These individuals create a serious working and competitive union.⁵⁵ Each unit participating in the vertical cooperation in the franchise system follows the marketing policy of the franchisor. In this way, a common marketing understanding and competitive unity is formed in the market.⁵⁶

3.2.2. The Element of Franchise System

The franchisor has some methods and knowledge that have proven themselves in their commercial activities. All of these constitute the franchise system. In the franchise contract, the franchisor undertakes to make all of these available to the franchisee. In general terms, this system consists of marketing methods, intangible goods and franchising organization.⁵⁷

Marketing methods are the franchisor's provision of goods and/or services, determining the standards, types, prices or fees, and setting out the basic principles of the business in terms of advertising policy, uniforms to be provided to employees, logistics.⁵⁸

Intangible goods constitute all intellectual and industrial rights that the franchisor undertakes to make available. In general, the goods and/or services themselves or the business brand and name, patents, the method of presentation of the goods or services supplied, the design of the place to be used, the tools, equipment and technical information to be used in the business constitute intangible goods.⁵⁹

Franchise organization is the principles that regulate the relationship between the parties to the franchise relationship. These are the issues that regulate issues such as the rights and obligations of the parties, the economic and administrative control of the franchisee by the franchisor.⁶⁰

⁵² Onur Saral, Franchise Sözleşmeleri, p. 103.

⁵³ Leylan Demirağ Aktaş, Franchise Sözleşmesinin Sona Ermesi Halinde Tarafların Hak ve Yükümlülükleri, PhD Thesis, Istanbul Commerce University Institute of Social Sciences, 2020, p. 13.

⁵⁴ Aydoğdu, p. 8; Ayşe Tuğba Altıntaş, Franchise Sözleşmesinde Tarafların Borçları, page 29.

⁵⁵ Kırca, p. 28; Ayşe Tuğba Altıntaş, Franchise Sözleşmesinde Tarafların Borçları, p. 29.

⁵⁶ Kırca, p. 30; Ayşe Tuğba Altıntaş, Franchise Sözleşmesinde Tarafların Borçları, p. 29.

⁵⁷ Ayata, p. 10; Şimşek, p. 100; Seda Karakartal, Franchise Sözleşmelerinde Portföy Tazminatı, ' (, Istanbul Bilgi University Graduate Programs Institute, 2022, p. 19.

⁵⁸ Irge Erdoğan, p. 17; Seda Karakartal, Franchise Sözleşmelerinde Portföy Tazminatı, p. 19.

⁵⁹ Bulur, pp. 767-768; Seda Karakartal, Franchise Sözleşmelerinde Portföy Tazminatı, p. 19.

⁶⁰ Eren, p. 987; Seda Karakartal, Franchise Sözleşmelerinde Portföy Tazminatı, p. 20.

3.2.3. Remuneration

In franchise contract, in order for the franchisee to use the franchisor's system, the franchisee must pay a fee in order to benefit from opportunities such as using intangible goods such as name, brand, emblem, benefiting from various trainings related to marketing, advertising in a consistent manner. This fee to be paid by the franchisee consists of an initial fee and a fee to be paid at certain intervals. The fee to be paid at certain intervals is determined according to the turnover of the franchisee. The initial fee is paid to the franchisor at the beginning of the contract and for issues such as utilization of intangible goods, advertisements, training.⁶¹

3.3. Termination and Consequences of the Franchise Contract

Despite the termination of the franchise contract, certain obligations of the franchisee and the franchisor continue.

3.3.1. Types of Termination of Franchise Contract

3.3.1.1. Expiration of the Term Agreed in the Contract

Franchise contracts are, in practice, generally concluded for a certain period of time. As a rule, the contract ends with the expiration of this period.

3.3.1.2. Ordinary Termination - Extraordinary Termination

Termination is the termination of the contract with future effect by one of the parties in contracts involving a continuing obligation relationship. Termination of the contract based on a reason is extraordinary termination. Termination of the contract without cause is ordinary termination. In order for ordinary termination to occur, the franchise agreement must be concluded for an indefinite term. However, provided that it is expressly agreed in the contract, it is also possible to terminate franchise agreements with a definite term through ordinary termination.⁶²

The franchise contract may be terminated immediately through extraordinary termination in the presence of justified reasons. Termination of the franchise agreement in this way occurs in cases where unforeseen circumstances arise, one of the parties cannot fulfill its obligations or it is contrary to the principle of honesty for the parties to continue the contract.⁶³

3.3.1.3. Other Reasons

The franchise agreement is terminated in the event of the death, bankruptcy and loss of capacity of one of the parties.

3.4. Obligations of the Franchisee

3.4.1. Failure to Use and Return the Intangible Elements

In the course of the term of the franchise contract, the franchisee uses promotional elements such as the name and trademark of the franchise system. With the termination of the franchise contract, the legal basis for using these elements also ends. In addition, the elements of the franchise system such as tools, remaining products, items related to the franchise relationship should also be returned. As a result of the return of all these, the franchisee will no longer be able to present itself as a branch of the franchisor. If these returns are not made

⁶¹ Zeliha Torun, *Rekabet Hukuku Açısından Franchise Sözleşmelerinin İncelenmesi*, pap.ge 16.

⁶² Turgut Akıntürk, Derya Ateş Karaman, *Borçlar Hukuku Genel Hükümler Özel Borç İlişkileri*, Beta Publishing, 18th Edition, 2012, p. 351.

⁶³ Turgut Akıntürk, Derya Ateş Karaman, *Borçlar Hukuku Genel Hükümler Özel Borç İlişkileri*, p. 352.

and the franchisee continues to act as a branch of the franchisor, unfair competition will be in question.⁶⁴

3.4.2. Non-Competition

There is a prohibition of competition between parties during the franchise contracts. In order for the non-competition to continue in the post-contract period, a clause regarding this must be added to the franchise contract. The non-competition obligation must be related to the goods and services in competition. Thus, the franchisor does not share its customer circle with the franchisee.⁶⁵ In this case, the temporal limits of the non-competition for the post-contractual period will be a matter of curiosity because the franchise agreement is an innominate contract. It is accepted in the doctrine that the provisions of Article 123 of the Turkish Commercial Code regarding the agency agreement shall be applied by analogy in the limitations on the prohibition of competition in terms of time. The reason for this is that franchise agreements and agency agreements have many common elements. Pursuant to Article 123 of the Turkish Commercial Code, a 2-year non-competition restriction may be imposed after the termination of the contractual relationship between the parties.⁶⁶

3.4.3. Confidentiality

In the course of the franchise contract, the franchisee learns certain information and secrets of the franchisor that are not shared with the public. Even if the franchise contract expires, the franchisee's confidentiality obligation continues for the post-contractual period. If the information within the scope of the confidentiality obligation is disseminated by the franchisor or disclosed by a third party, then the franchisee will not have a confidentiality obligation.⁶⁷

3.5. Obligations of the Franchisor

3.5.1. Obligation to Take Back Franchise Equipment

After the termination of the franchise contract, the franchisee may hold the equipment of the franchise system. In this case, the fate of this equipment is important. Then, it is not possible to use this equipment within the scope of the non-competition obligations in the contract. In the post-contractual period, the franchisor is obliged to take back this equipment within the framework of liability.⁶⁸ Franchise contracts generally impose an obligation on the franchisor to take back the equipment belonging to the franchise system. When this obligation is determined by the contract, the franchisor will take back the equipment in question upon the termination of the contract. In the doctrine, it is accepted that such an obligation belongs to the franchisor in accordance with the principle of good faith.⁶⁹ If the franchisee is at fault, the franchisor has no such obligation. In such a case, the franchisee must bear the risk created by its gross negligence. If the termination of the franchise contract is due to the fault of both parties, a determination should be made in proportion to the fault of the parties.⁷⁰

⁶⁴ Seda Karakartal, *Franchise Sözleşmelerinde Portföy Tazminatı*, p. 39.

⁶⁵ Zeynep Tuzlu, *Franchise Sözleşmesinin Sona Ermesi ve Sonuçları*, p. 97.

⁶⁶ Ozan Can, *Franchise Sözleşmelerinde Kararlaştırılan Sözleşme Sonrası Rekabet Yasağı Bağlamında Bir Yargıtay Kararının Değerlendirilmesi*, Ankara Barosu Dergisi, Issue:1, 2014, p. 61.

⁶⁷ Ayata, 132; Barış Cihan Cantürk, 'Franchise Sözleşmesinde Denkleştirme İstemi' (Bahçeşehir University Institute of Social Sciences, 2019, p. 44.

⁶⁸ Gürzumar p. 179; Onur Saral, *Franchise Sözleşmeleri*, p. 128.

⁶⁹ Kırca, p. 189; Onur Saral, *Franchise Sözleşmeleri*, p. 128.

⁷⁰ Kırca, p. 190; Onur Saral, *Franchise Sözleşmeleri*, p. 128.

3.5.2. Payment of Goodwill Compensation

The franchisee gains a permanent goodwill the time he is involved in the franchise system. When the contract expires, the franchisee leaves this goodwill to the franchisor. In the event that the franchisor continues to sell goods and/or services by taking advantage of this goodwill that it has not created, the franchisee may receive goodwill compensation as a matter of equity.⁷¹ In order for goodwill compensation to arise, the franchisee must not be at fault.⁷²

4. Conclusion

Despite of the existence of various franchise-based products and services in Turkey, franchise contracts are not regulated under Turkish law and therefore they are considered as innominate contracts. Franchise contract is commutative in nature which imposes mutual obligation upon the contracting parties, namely the franchisor and the franchisee. Franchise contract establishes a vertical and continuing relationship along the term of contract. In the course of the franchise contract, the obligations of the franchisor are; the obligation to inform in the pre-contractual period, the obligation to provide the franchise system and the obligation to protect and support the franchisee. Meanwhile, the obligations of the franchisee are the obligation to market the goods or services personally, to use the franchise system, to tolerate supervision and to comply with instructions, to pay fees and to be loyal. Even as a result of the termination of the franchise agreement, the franchisee's non-competition and confidentiality obligations continue and the franchisee is obliged not to use the equipment in the franchise system. The franchisor, on the other hand, is obliged to take back the franchise equipment and pay goodwill compensation to the franchisor after the termination of the agreement. For this reason, the obligations of the franchisee are heavier even after the franchise agreement is terminated.

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⁷¹ Doğan, M., p. 337; Zeliha Torun, Rekabet Hukuku Açısından Franchise Sözleşmelerinin İncelenmesi, p. 139.

⁷² Buse Naz Büyükkalay, Franchise Sözleşmesi ve Uygulamadaki Önemi, p. 126.

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