

Chapter 10

Trust Responsibility Arising From Within the Companies Community

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ABSTRACT

Within the scope of Turkish Commercial Code, Turkey is the first state to regulate the responsibility of corporate groups adopted with the Wibu/Swissair verdict of Switzerland Supreme Court (BGE 120 II 331) arising out of trust in society or consumers in its national legislation. The main subject of the study is the provision regulated in article 209.

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INTRODUCTION

Within the scope of Turkish Commercial Code, Turkey is the first state to regulate the responsibility of corporate groups adopted with the Wibu/Swissair verdict of Switzerland Supreme Court (BGE 120 II 331) arising out of trust in society or consumers in its national legislation.

First of all, we must set forth that the responsibility type regulated within the scope of Article 209 of Turkish Commercial code is neither the responsibility of the contract nor tort liability but a separate type of responsibility (Aker, 2008, p. 93; Durak, 2017, p. 241).

Upon examination of the reason for verdict in detail, it is obvious that the Swissair decision of Switzerland Supreme Court had a determining role (Yılmaz, 2010, p. 183).

195-209 Articles of Turkish Commercial Code contain the provisions of Group of Companies, which have been regulated in our legislation beforehand. While the relevant articles up to the Article contain the responsibility, structuring of the parent and affiliated companies, calculation of the share and vote rates, the reports of affiliated and parent companies, obtaining information and miscellaneous additional provisions; “Responsibility arising out of Trust” constitutes the last of the block articles of group of companies, regulated within the scope of article 209.

The main subject of our study is the provision regulated in Article 209 as “*In cases where the controlling company attains a level where its group reputation inspires confidence among the community or consumers, it shall be liable for any consequences of such.*” and it also contains the condition for being a controlling company in a group of companies and examination of concepts and facts of trust and reputation respectively, and finally the full text of federal court decision constituting the spirit and underlying the foundation for the article will be provided as it is the first case in the world on this matter.

FOUNDING TERMS FOR RESPONSIBILITY ARISING FROM TRUST

Some terms and factors are required to be available together in order to be held responsible for the responsibility arising from trust within the context of Article 209 of Turkish Commercial Code. In determination of these terms, which can also be defined as founding terms, evaluation and analysis of the article of law and reason are together will specify the boundary lines of the scope of responsibility arising from trust in a definite manner.

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