

# THE PROTECTION OF CONSUMERS THROUGH PRICE CONTROL IN TURKEY

by

*Dr. Selim KANETI*

Professor of Civil Law

Istanbul University Law Faculty

## I. INTRODUCTION

The protection of consumers through price control has been widely used in Turkey at various periods, especially during economic crises. The legislature has tried to contend with the adverse results for the consumers of the law of supply and demand, through a legal limitation of prices.

The common characteristics of the laws prescribing a price limitation system are the establishment of a strict administrative control and the penalizing of infractions by long-term imprisonments. Another characteristic of the price control legislation is that it is not continuously applied; the executive power has been vested with the authority to decide if and when the price control legislation shall be applied.

It must be also reported that in the price control legislation, as in many economic laws, the legislature has delegated its authority to the executive power to a large extent. In its decision of 28.3.1963 no. 4-71, the Constitutional Court has rejected the grievance of unconstitutionality of a law which delegates to the executive power the authority to regulate by decrees economic issues. In this decision taken by a slight majority, The Constitutional Court refers to the necessity of urgent technical enactments in economic affairs; the slowness of the legislative body has to be counterbalanced by the

delegation given over to the executive body which has a thorough command on the changing circumstances. Such an arrangement does not imply the transfer of the legislative power to the executive but a mere exercising of this power in adequateness with the particularity of the factual conditions<sup>1</sup>. The minority of the Constitutional Court in its dissenting opinion emphasizes that a blank delegation given over to the executive is unconstitutional and that the legislative body has to fix strictly the framework of the regulative power conceded to the executive<sup>2</sup>.

## II. PRICE CONTROL LEGISLATION IN TURKEY AND ITS APPLICATION

### 1. Law no. 3003 on the determination and control of the cost and selling prices of industrial products.

The Law no. 3003 of June 8, 1936 on the determination and control of the cost and selling prices of industrial products<sup>3</sup>, in its article 1, gives to the Ministry of Economy the authority to fix and control the cost and the wholesale prices of the industrial products it thinks proper to. This Ministry has also the power, for this purpose, to investigate the management conditions, the general position of the enterprises and to inspect their documents and records. The selling prices determined by the Ministry are published. The owners and the managers of the enterprises which sell the products to be consumed within the country in excess of the wholesale prices determined by the Ministry pursuant to article 1, are punished by an imprisonment from one month to one year and a fine (article 2).

Pursuant to article 3 of the Law, a decree of application has been published by the Council of Ministers on March 30, 1940, under no. 2/13147<sup>4</sup>. According to article 1 of the decree, the

1) *Anayasa Məhkemesi Kararlar Dergisi* (Periodical of The Decisions of the Constitutional Court), no. 1, p. 132/158.

2) p. 142/148 of the same decision.

3) *Official Gazette of the Republic of Turkey*, June 13, 1936.

4) *Official Gazette of the Republic of Turkey*, April 9, 1940.



Ministry of Economy publishes, as a preliminary step, the industrial products whose cost and wholesale prices shall be determined. Then, the necessary inspection is conducted in the enterprises involved. The inspectors of the Ministry shall study all the details related to the cost and wholesale prices in the premises of the enterprises involved. The wholesale prices determined as a result of the inspection, the specifications and particularities of the industrial products and the minimum quantity considered as a wholesale under current commercial practice shall be published by the Ministry. The Ministry determines also the transport costs which shall be added to the wholesale price in case the delivery is effected out of the production center.

The application of the wholesale prices determined and published by the Ministry is followed up by the organization of the Ministry and the local municipalities. The inspectors who shall determine wholesales made in excess of the prices published by the Ministry must submit the case to the public prosecutor for legal proceedings. The powers granted by the law no. 3003 to the Ministry of Economy have been transferred to the Ministry of Industry and Technology as a result of the changing in the administrative organization.

The law no. 3003 has been recently entered into practice by a communique of the Ministry of Industry and Technology of January 10, 1976, for an important range of industrial products<sup>5</sup>. The communiqué provides that the increase of the price of the products listed in it, the determination of the wholesale price of the newly manufactured products included in the list, the re-determination of the wholesale prices, if necessary, depend on the prior authorization of the Ministry. It also explains the modalities of the applications to be made to the Ministry by the producing enterprises. This communiqué has been amended and renewed many times by the Ministry. The application of law no. 3003 has been suspended in 1980 by the communiqué no. FKS 80/1-1 of the

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5) Official Gazette of the Republic of Turkey, January 10, 1976, no. 15464.

Ministry of Industry and Technology<sup>6</sup>. This communiqué introduced the system of declaration. The enterprises under this communiqué have the right to determine by themselves their factory and wholesale prices. These prices shall be communicated to the Ministry with their date of application. The Ministry has the authority to inspect and to change the costs and the wholesale prices, if necessary.

## 2. The National Protection Act (Law no. 3780)

The National Protection Act has been passed on 1940, during the Second World War, under exceptional conditions<sup>7</sup>. The article 1 of this law (no. 3780) grants to the Council of Ministers the authority to exercise the extraordinary powers provided by the law, in order to strengthen the economic and defensive might of the country in emergency cases. The emergency cases are the following ones:

- A — General or partial mobilization.
- B — Probability for the State to be at war.
- C — State of war between foreign countries, influencing the Republic of Turkey.

In case of emergency necessitating the exercise of the powers granted by the law, the Council of Minister starts the application and informs the legislative body of this fact. It publishes also the commencement of the application of the law. The ending of the state of emergency and of the application of the law is decided and published by the Council of Ministers; information is given to the legislative body.

The article 31, I of the Law vested the Council of Ministers with the power to determine the items of the cost, the maximum profit rates the maximum selling prices of the commodities it judges necessary, directly or through the municipalities, the chambers of commerce and industry or the prefectures. The article 31, II, B of the law forbids the sales or offers of sales to be made in excess

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6) Official Gazette of the Republic of Turkey, February, 1, 1980, no. 16887.

7) Official Gazette of the Republic of Turkey, January 26, 1940, no. 4417.



of the prices determined under article 31, I. The violation of article 31, II is punished by article 57, I with an imprisonment of ten to thirty years and a fine. Article 57, III provides also the confiscation of the commercial and industrial estates of the accused<sup>8</sup>.

On February 19, 1940 and by the decree no. 2/12877, the Council of Ministers decided to start the application of the National Protection Act, in view of the state of war in Europe, which was already affecting the economic framework of the country<sup>9</sup>. The application of the National Protection Act have been suspended only by the decree dated September 16, 1960, no. 5/322<sup>9a</sup>. As it has been stated by the decision dated December 2, 1963, no. 136/285 of the Constitutional Court<sup>10</sup>. The National Protection Act is continuing to be in force, only its application has been stopped. The Council of Ministers have the power to start its application<sup>11</sup>.

The General Assembly of the Claim Sections of the Council of State by its decision of February 2, 1951, no. 461/40 accepted that the Council of Ministers has the authority to delegate to one or more Ministries the powers granted by the law<sup>12</sup>. The Court of Cassation, in its decision of unification of the jurisprudence of March 30, 1949, no. 35/4, emphasized that the Council of Ministers is also vested with the authority to delegate its powers to one or more ministries, to municipalities or to special committees<sup>13</sup>.

### 3. Law on the protection of the value of the Turkish Money.

On February 20, 1930, during the economic crisis, the Law no. 1567 on the protection of the value of the Turkish Money has been

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- 8) cf. TOSUN, *Fiyat Nizamını İhlâl Suçları* (Infractions committed against the price order), Istanbul 1960, p. 192/219.
  - 9) Official Gazette of the Republic of Turkey, February 21, 1940, no. 4439.
  - 9a) KIBAR, *The decrees in Turkish Law* (Türk Hukukunda Kararname), *İdare Hukuku ve İdari Yargı ile İlgili İncelemeler*, III, Danıştay Başkanlığı, Ankara 1980, p. 288.
  - 10) KIBAR, *op. cit.*, p. 288/289.
  - 11) KIBAR, *op. cit.*, p. 288/289.
  - 12) KIBAR, *op. cit.*, p. 286.
  - 13) KIBAR, *op. cit.*, p. 286/287.

passed. This law gives to the Council of Ministers, the power to regulate by decrees the selling and buying of foreign currencies, shares and bonds, the import and export of the said securities, of precious metals, stones and gems, bills, drafts and other instruments of payment and to take the necessary measures with the purpose of protecting the value of the Turkish money<sup>14</sup>. The law has been enacted at the beginning for being in force during a period of three years. It has been extended many times for different periods and amended. It becomes permanent by the law no. 1224 on 1970<sup>15</sup>. The grievance of the unconstitutionality of this law, has been rejected by the Constitutional Court, as explained above<sup>16</sup>.

Pursuant to the powers granted by the law no. 1567, the Council of Ministers published till now 25 decrees numbered from 1 to 25 on the protection of the value of the Turkish Money and many amendatory and supplementary decrees<sup>17</sup>. The decree no. 19 on the protection of the value of the Turkish money, published in the Official Gazette of October 10, 1973, pursuant to article 1 of the law no. 1567 and in order to protect the economic stability, has founded a Price Control Committee, vested with the power of price control. No increase of price can be made on the products to be determined by this Committee, without its prior approval.

If an increase of price is made on a product included in the price control system by the Committee, without its prior approval, it constitutes an infraction punished under article 3 of the law no. 1567, by an imprisonment from seven months to five years and a fine<sup>18</sup>.

After the publication of the Communiqué of the Ministry of Industry and Technology based on the law no. 3003, the function of the Price Control Committee formed by the decree no. 19, has been limited to retail trade and imported commodities. The

14) Official Gazette of the Republic of Turkey, February 25, 1930.

15) Official Gazette of the Republic of Turkey, February 11, 1970.

16) cf. footnotes 1/2.

17) cf. ERMAN, *Döviz Suçları*, Istanbul 1978; Addendum, I: Istanbul 1979; Addendum II: Istanbul 1980; Addendum III: Istanbul 1981; Addendum IV: Istanbul 1982.

18) cf. ERMAN, *op. cit.*, p. 14.



factory and wholesale prices of the locally produced commodities were under the control of the Ministry of Industry and Technology, acting under the power granted by law 3003 on the determination and control of the cost and selling prices of industrial products.

However, the price control system based on the law no. 1567 on the protection of the value of the Turkish Money collapsed following the jurisprudence of the Cassation Court. The 7th Penal Section of the Cassation Court, in its decision of November 21, 1974, no. 10582/10620, emphasizes that the law no. 1567 is a financial law and does not grant to the Government the power to establish a general price control system; it gives only the power to regulate the import and export of financial means and instruments<sup>19</sup>. This jurisprudence of 7th Penal Section has been confirmed by the majority of the General Assembly of the Penal Sections of the Cassation Court, in its decisions of April 21, 1975, no. 1175/7-71-88 and of February 18, 1980, no. 509/64. According to these decisions, the law no. 1567 has granted the power of regulation to the Council of Ministers, with the purpose of protecting the Turkish money vis-à-vis the foreign currencies. In other words the Council of Ministers is vested with the power to edict decrees with the purpose to protect the foreign value of the Turkish money. The law no. 1567 follows a mere financial aim and has no relation with the protection of the intern buying power of the Turkish money; above all, it does not give the power to take mere economic measures. On the other hand, the article I of the law gives to the Council of Ministers the right to edict decrees; it does not give to the Council of Ministers the authority to delegate the power to a Committee. Therefore the delegation given by the Council of Ministers to the Price Control Committee is also without legal ground. In consequence, the decree no. 19 lacks of legal ground and the infractions against this decree or the communique's of the Price Control Committee formed by this decree are not punishable under the law no. 1567<sup>20</sup>.

19) Yargıtay Kararlar Dergisi (Periodical of the Decisions of the Cassation Court), Vol. 1, January 1975, no. 1, p. 139/140.

20) Yargıtay Kararlar Dergisi (Periodical of the Decisions of the Cassation Court), Vol. VI, June 1980, no. 6, p. 847/854.

The decree no 19 has been suppressed by the decree no. 8/177 published in the Official Gazette of January 25, 1980 bis. On the same Official Gazette has been also published the decree no. 8/173 suppressing the Committee of Price Determination, Control and Coordination, formed by the decree 7/16374 dated September 14, 1978 and which have been also based on the law no. 1567.

It is also interesting to remark that the opinion of the Council of State is quite different from the opinion of the Court of Cassation. In its decision of 23.2.1979, no. 598/34, the majority of the General Assembly of the Claim Sections of the Council of State, emphasizes that the power granted by the article 1 of the law no. 1567 cannot be limited to the protection of the external value of the Turkish money; in the other hand, the internal and the external value of the money cannot be disjointed from each other. The protection of the internal value of the Turkish money depends on the price stability of the market; the internal as well as the external value of the national money represent its buying power. The changing of the prices at a large scale shall affect obviously the buying power of the money. The decrees edicted in order to set off the effects of the price instability are aimed at the protection of the value of the Turkish money and stay therefore within the frame of the law no. 1567<sup>21</sup>.

#### **4. Law on State Economic Enterprises and their establishments and subsidiaries.**

The law no. 440 dated March 12, 1964 on State Economic Enterprises and their establishments and subsidiaries<sup>22</sup>, provides in article 24, that, in principle, the state economic enterprises are free to determine the prices of their products and services. However, the prices of the products and services which are considered as essential are to be determined, if necessary, by the Council of Ministers. In principle, this power is used by the Council of Ministers in order to protect the consumers of the essential products and services.

21) Periodical of the Council of State (Danıştay Dergisi), Year 10, No. 36/37, p. 234/251.

22) cf. ERGINAY, Kamu İktisadi Teşebbüsleri, Ankara 1976, p. 177.



### 5. The Municipality Law.

Under the article 15.43 of the Law no. 1580 (dated April 3, 1930) on Municipality<sup>23</sup>, the municipalities have the power to edict maximum wholesale and retail prices for meat, bread, fruits, vegetables, firewood and charcoal. This power can be extended in case of necessity, under the approval of the local administrative committees, to other foods and other essential commodities. The municipalities are vested also with the power to determine maximum profit rates for fruits and vegetables. The municipalities are also authorized under article 15.16 of the law, to inspect and follow up the application of the maximum prices and profit rates which are edicted.

### 6. The Martial Law.

The article 3, h of the Martial Law, gives the power to the Martial Law Commander, to take the necessary measures for essential commodities. This power implies the control of prices; in fact it includes the authority to prohibit the selling of essential commodities to excessive prices<sup>24</sup>.

### 7. The Penal Law.

The article 358 of the Penal Law punishes with an imprisonment from three months to three years and a fine, the causing of the increase or decline of the prices of commodities, by diffusion of falso news or by other fraudulent means<sup>25</sup>. The article 401 punishes with an imprisonment from one year to five years and a fine, the causing of the scarcity or the increase of prices of essential commodities, such as meat, bread, firewood, and coal, by diffusion of false news or by other fraudulent means<sup>26</sup>. Ob-

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23) Official Gazette of the Turkish Republic, 14.4.1930 and Law No. 150 dated December 2, 1960 amending articles 15.43 and 15.16 of the Manicipality Law.

24) Article 3, h of the Martial Law No. 1402, amended by the Law No. 2301, dated September 19, 1980.

25) TOSUN, *op. cit.*, p. 111/132.

26) TOSUN, *op. cit.*, p. 133/137.

viously, these articles of the Penal Law are aimed at the protection of the consumers.

#### **8. The Pharmaceutical Products Act.**

Under articles 6 and 7 of the Pharmaceutical Products Act (Law no. 1262), the prices of the pharmaceutical products manufactured in Turkey, are under the control of the Ministry of Health and Social Assistance. The prices to be applied are submitted to the prior approval of this Ministry which is vested with the power of requesting the change of the prices, according to the market conditions<sup>27</sup>.

#### **9. The Sugar Act.**

Under article 8 of the Sugar Act (law no. 6247, dated June 22, 1956), the sale prices of sugar is determined by the Council of Ministers<sup>28</sup>.

#### **10. Prices of petroleum and petroleum products.**

The prices of petroleum and petroleum products are determined by the Government, in accordance with the power given under article 5 of the law no. 79, dated September 10, 1960<sup>29</sup>.

#### **11. Price of cement.**

The price of cement is fixed by the Ministry of Industry and Technology under the power given by the decrees K/1164 and K/1180 which have been previously published under the Law of National Protection and which have been maintained in application by the article 10 of the law no. 79.

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27) Official Gazette of the Republic of Turkey, May 26, 1928, no. 898.

28) Official Gazette of the Republic of Turkey, June 29, 1956, no. 9345.

29) Official Gazette of the Republic of Turkey, September 16, 1960, no. 10605.



### III. CONTRACTS MADE AT PRICES IN EXCESS OF THE LEGAL LIMITS

The effect of a contract which is made at a price in excess of the legal limit, is not directly regulated by the Turkish Code of Obligations. According to article 20 of the Code of Obligations, a contract concluded in opposition to the legal order, is void. Article 20, II of the Code stipulates that if the cause of invalidation affects only some parts of the contract, only these parts are void, the remaining parts remaining valid, unless it is necessary to accept that the contract should not be concluded as a whole without the void parts. This article, in accordance with the rule "utile per inutile non vitiatur" (the void does not invalidate the effective) of the Pandekt Law, accepts that the void parts of the contract do not affect, in principle, the valid parts and that the valid parts remain in force. The rule of partial nullity includes the case of "vertical" invalidity. If the contract has been concluded at a price in excess of the limit determined by the law or the competent authorities, the partial nullity shall apply. The part of the prestation which is in excess of the legal limit is void; the prestation shall be reduced to the maximum legal limit<sup>30</sup>.

However, this being the general principle, in some cases, the vertical partial invalidity can produce a total invalidity, if article 20, II of the Code of Obligations is textually applied. The maintaining of the reduced prestation may not correspond to the presumed will of the parties. On the other hand, the article 1466 of the Commercial Code, stipulates that the act including conditions prohibited by commercial rules are void, unless there is an opposite rule; nevertheless, if the contract has been made in excess of the limit fixed by the law or the competent authorities, it is considered to be concluded at the maximum limit; in this case, prestations performed in excess can be requested back, even not executed under an error. In this case too, the last sentence of article 20, II of the Code of Obligations shall not apply<sup>31</sup>. This article giving

30) KANETI, *Hukukî İşlemlerin Çevrilmesi (Tahvili) (The Conversion of Legal Acts)*, Istanbul 1972, p. 17.

31) KANETI, *op. cit.*, p. 17.

the possibility to maintain the contract reduced to the legal limit shall be applied, even if its solution does not suit the presumed will. Such a solution is commended by the aim of the price limitation imposed by the law or by competent authorities<sup>32</sup>. In fact the protection granted to the consumer by the price control legislation implies that the consumer shall be able to obtain the commodity or the service at the legal limit; the total invalidity shall be, in any case, in contradiction with this purpose. It is why that the solution adopted by the article 1466 of the Commercial Code must be valid also for all civil transactions too<sup>33</sup>.

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32) KANETI, *op. cit.*, p. 15/17.

33) KANETI, *op. cit.*, p. 17; TUNÇOMAĞ, *Türk Borçlar Hukuku (Turkish Law of Obligations)*, I: General Rules, Istanbul 1976, p. 262/264.