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THE CONDITIONS FOR FOREIGNERS TO WORK IN TURKEY WITHOUT BEING SUBJECT TO SOCIAL INSURANCE

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ABSTRACT

Purpose- The status of persons residing in a foreign country and working in Turkey for a temporary period will be examined in terms of social insurance law.
Methodology- Law numbered 5510 and the circulars of Social Security Institution will be assessed in the light of Court of Cassation's judgment and doctrine.
Findings- The fact that element of temporariness is limited to 3-month period in the regulations constitutes a burden beyond the measure that exceeds the purpose of social security in long-term assignments despite its temporary nature in practice.
Conclusion- Persons who continue to be insured in the country of which they are citizens should not be adapted to the Turkish social insurance system irrelevant of the length of temporary assignment period.

Keywords: Social insurance, insured, social security of foreigners, temporary assignment.
JEL Codes: K31, K41, J41

1. INTRODUCTION

Each country adopts different principles that restrict foreigners while regulating rights and obligations related to their citizens. According to article 16 of the Constitution titled situation of foreigners, "Basic rights and freedoms for foreigners may be restricted by law in accordance with international law". However regardless of citizenship, humanity's need for assurance against social risks such as disease, unemployment, old age is common; therefore, from the legal aspect social security is the area that should not be regulated different for foreigners (Tuncay/ Ekmekçi, 2017: 298). ILO Convention concerning Equality of Treatment of Nationals and Non-Nationals in Social Security dated 1962 numbered 118 which Turkey is a party to emphasize the obligation of states to provide a minimum level of assurance against social risks to foreigners with dignity on an equal basis with their citizens. The principle of territoriality which is valid in social security law, finds its basis with the Convention No. 118 within the frame of international law and prohibits states to a certain extent to exclude foreigners from the social security system or to grant foreigners worse rights than its citizens.

As in other countries, pursuant to the principle of territoriality, foreigners working in Turkey either dependently or independently are subject to the same legislation as Turkish citizens, without prejudice to the provisions of the bilateral social security agreements signed with 28 countries (For the full list of countries with which Turkey has signed bilateral social security agreement see http://www.sgk.gov.tr/wps/portal/sgk/tr/emekli/yurtdisi_islemler/sosyal_guvenlik_sozlesmeleri). As in the case of temporarily assignment of the employees by the enterprise established in foreign countries to its subsidiaries in Turkey or to

thirds parties, in case of foreign citizen's working in Turkey is temporary, adapting him/ her into Turkish social security system results against him/ her due to the reasons of double payment of contributions, non-transfer of paid contributions between the countries. At this point, the differential criterion for the different treatment is whether the temporarily assigned employee's social insurance continues in the consignor country.

The subject of this study is the conditions under which foreign nationals who work in Turkey subjected to social insurance fall outside the scope of Turkish social insurance scheme. Regarding the subject, international law principals concerning the legal status of foreigners in social security law and its application in Turkish law will be examined first and the conditions for foreigners to be able to work without being insured in Turkey as an exception of the principle of territoriality in social security law will be presented.

2. PRINCIPLES OF INTERNATIONAL LAW AND TURKISH LEGISLATION ON THE SOCIAL SECURITY OF FOREIGNERS

2.1. Prohibition of Different Treatment with the Justification of Citizenship in the Field of Social Security

The first convention of the International Labour Organization in the field of social security is the Social Security Minimum Standards Convention dated 28.06.1952. The other fundamental convention which is the continuation of the aforementioned convention and directly related to our subject is the Convention concerning Equality of Treatment of Nationals and Non-Nationals in Social Security dated 28.06.1962. Both of these conventions to which Turkey is a party, entered into force with the ratification act dated 29.07.1971 numbered 1453 (OG. 10.08.1971, 13922). In relation to our subject, the essence of the Convention No. 118 is the equal treatment of the nationals of any other member states for which the Convention is in force with its own nationals both as regards coverage and as regards the right to benefits, in respect of every branch of social security for which it has accepted the obligations of the Convention (art. 3).

In the Convention after the social risks as medical care, sickness benefit, maternity benefit, invalidity benefit, old-age benefit, survivors' benefit, employment injury benefit, unemployment benefit and family benefit were listed as in ILO Convention No. 112, member states were entitled to limit the obligation of equal treatment to one or more of the social risks listed here (art. 2). There is an exception to limitation regarding death benefits. According to this, in case of death benefits, it is sufficient for the country in which the foreigner is a national to be a party to the Convention No. 118 in respect of equal treatment, a limitation is prohibited in this regard. Equality of treatment as regards the grant of benefits cannot be accorded with any condition of residence (art. 4). However, this principle is not unconditional. Firstly, provided that equality of treatment in respect of the benefits of a specified branch of social security may be made conditional on residence in case of nationals of any Member states the legislation of which make the grant of benefits under that branch conditional on residence on its territory. The Convention No. 118 does not impose any obligation to provide a more advantageous situation for foreigners than nationals. Secondly, for the grant of the benefits other than medical care, sickness benefit, employment injury benefit and family benefit that funded directly by the insured persons and their employer or subjected to condition for insured to have worked for a certain period of time,

6 months before the request for assistance for maternity and unemployment benefits,

5 years of invalidity from the date of the request for invalidity benefits;

10 years after the age of 18 years for old age benefits, five years of this decade can be sought to be just before the request for assistance.

With the help of these brief explanations, it should be said that the foreignness in the field of social security cannot be a ground for different treatment from the citizens except for some exceptions, and that every foreigner who fulfils the conditions laid down in the legislation has the right and obligation to be insured.

2.2. Work Permits of Foreigners

Right to work and right to social security as both being fundamental social rights, are not identical. Unlike social security, the right of foreigners to work is an area where every state can take different actions in favour of its nationals. The idea behind the restriction of foreigners' right to work is to protect citizens' right primarily. Restriction on the employment of the foreigners is a common measure taken by almost every state to prevent unemployment of its citizens (Marhold, Franz/Friedrich, Michael, 2012: 5-26; Koch, 2015: 197 ff; Geiser, Thomas/ Müller, Roland, 2012: 99). In addition, the concern for the decrease in wages constitutes a basis for the restriction. Previously, Law dated 27.02.2003 numbered 4817 on the Work Permits of Foreigners (O.J.

06.03.2003, 25040) and now the Law dated 28.07.2016 numbered 6735 on the International Labour Force (O.J. 13.08.2016, 29800) require foreigners to obtain permission before starting to work in Turkey either dependently or independently, unless otherwise provided in bilateral or multilateral agreements Turkey is a party to (art. 6).

According to Law No. 6735, "international labour policy shall be determined by taking into account; the mobility of the work force and regional developments as well as decisions of Migration Policies Board, the developments related to employment and business life, periodic sectoral and economic changes, development plans and programs, bilateral economic social and cultural relations as regard to foreigner's country of citizenship, international bilateral or multilateral agreements and conventions to which Turkey is party, public order, public security and public health" (art. 4).

In the legislation, foreigner is defined as the person who do not possess Turkish citizenship. According to this, foreigners are subject to permission in order to work in Turkey in principle but the foreigners who are stated to be able work without obtaining any work permit in other laws or bilateral or multilateral treaties or international conventions Turkey is party to can work or be employed without obtaining a work permit (art. 6). In some cases, a work permit exemption can be recognized to foreigners that grants the right to work without a work permit and the right to reside in Turkey. For example, foreign non-resident board member of joint-stock companies that are founded pursuant to Law No. 6102, non-executive partners of other companies, and cross-border service provider whose in-country activities not exceeding ninety days within the period of hundred and eighty days are assessed in the scope of work permit exemption (art. 13). It is essential that even those who are within the scope of the work permit exemption must document their status before the Ministry.

As for some foreigners, the conditions and procedure for obtaining permission are simplified, but they are not exempted from work permit (art. 16). For example, citizens of Turkish Republic of Northern Cyprus, citizens of the countries that are member of the European Union, persons declared by Ministry of Interior or Ministry of Foreign Affairs as of Turkish origin and those employed by their employers for a certain period in a project which is being realized in Turkey.

From the point of view of this summary info, prerequisite for foreigners to be subject to social insurance in Turkey is to have obtained work permit pursuant to Law No. 6735 and other relevant legislation. However, this does not mean that employees who works without obtaining this permit cannot be adapted to the social insurance system. As it will be examined in the following sub-heading, the principle of necessity for Turkish citizens in Turkish social insurance system is also valid for foreigners as of 06.08.2003.

2.3. Social Insurance of Foreigners

Until the amendment to abolished Social Insurance Law No. 506 by the Law No. 4958, short term insurance branches for the foreigners who work dependently in Turkey were obligatory while invalidity, old-age and survivors' insurance were optional (art. 3. See also Ermumcu, 2013: 60). Law No. 4958 made foreign insured subject to all social insurance branches irrespective of their wish, by introducing a fundamental change in accordance with the Convention No. 118 which our country is party to (Caniklioğlu, 2006: 685). The mandatory principle on foreigners was maintained in Law No. 5510 which entered into force on 01.10.2008. It is possible to construe from the wording of the provision stating "foreigners except those who are nationals of countries that have international social security agreements based on reciprocity principle working under service contract" that the nationals whose country of origin has a bilateral treaty with Turkey are not subject to social insurance.

Such interpretation is contrary to the essence of the right to social security, with this provision it is desired that principles in the concrete treaty provisions have priority over Law No. 5510 when implementing them on the nationals whose country has a bilateral treaty with Turkey (Tuncay/ Ekmekçi, 2017: 299). Accordingly, the principles of Law No. 5510 will be applicable to those working in Turkey by obtaining work permit who are nationals of a country which has a social security agreement with Turkey and who are not insured in that country, they are covered with all insurance branches (Sözer, 2017: 71).

3. FOREIGNERS NOT BEING SUBJECT TO OBLIGATORY SOCIAL INSURANCE SCHEME

As it can be seen, in the current legal system, in principle, there is no difference between the foreigners and the nationals in terms of their social insurance (Arıcı, 2015: 253), the principle of necessity in terms of all the insurance branches also applies to them. On the other hand, in accordance with the legislation on work permits for foreigners, the principle of necessity in the field of social insurance has not been sought in relation to foreigners who have been allowed to work without permission or whose conditions have been facilitated for obtaining permits. According to article 6 of the Law No. 5510 which has the title of non-insured persons, "without prejudice to the provisions of international social security agreements; persons who are sent to

Turkey for a job by or on behalf of an organization established in a foreign country and who document to be subject to social insurance in the foreign country, and among the ones who work in Turkey on his/ her own name and account and resides abroad and are subject to the social security legislation of that country" are not deemed insured.

Work of foreigners without being subject to social insurance has been regulated here; not the opportunity of working without work permit within the scope of Law No. 6735.

There are two aspects regarding foreigners who are not insured in the provision that draw attentions. The first is that the provisions of international social security agreements have been reserved. When nationals of one of 28 countries that Turkey has signed a bilateral social security agreement work in Turkey, the provisions of the agreement will be taken into consideration with priority. The latter, different principles are foreseen between the insured who work dependently in Turkey and the ones who work independently.

The Social Security Institution issued the Circular No. 2011/43 dated 31.05.2011 on the implementation of this provision regarding the work of foreigners without social insurance, the details of application such conditions are given here.

3.1. The situation of foreigners who are sent by and on behalf of an organization established in a country with which Turkey has not signed a social security agreement

Foreigners sent to work in Turkey on behalf of and by an organization established in a country are not subject to compulsory social insurance for a period of maximum 3 months with the requirement of certification indicating that such persons are subject to social insurance in foreign country (Korkusuz/ Uğur, 2015: 278). Accordingly, even though the temporary assignment of foreigner in Turkey is for period of 3 months or shorter, if he/ she cannot document that he/ she works in home country subject to social insurance or receives pension due to his/ her work is deemed obligatory insured. This requirement is related to the indispensability of social security as the basic human right. A foreigner who do not have a right to social security in his/ her home country, even though he/ she works temporarily in Turkey, cannot have a choice as to participate o Turkish social security system. An exception to this can be considered for persons with a social security right in the country of residence. Because foreigner is guaranteed for the social risks that could occur while working temporarily in Turkey in accordance with the social insurance in home country. In this way, double insurance for the same work is also prevented (Güzel/Okur/Caniklioğlu, 2016: 137; Uşan, 2009: 236).

The exemption is limited to 3 months. However, it cannot be said that a 3-month exemption is not valid for those who have been granted work permits for more than 3 months since it has been apparent that the work will last for longer than 3 months from the beginning. In this case, the Social Security Institution will register the foreigner as insured after 3 months of work (Bulut, 2011: 209).

According to the Social Security Institution circular, this 3-month exemption is one-off for each foreigner. Accordingly, this limitation cannot be evaded by coming to Turkey every time with three-month assignments. A foreigner who benefits from a three-month exemption is then directly adapted to the Turkish social insurance scheme, even if he or she comes to work for less than 3 months. But once, for example, foreigners who have worked temporarily for a period of 2 months in Turkey, when later assigned to Turkey again are considered within the exemption of 1-month period; after this 1 month, they are registered as insured. In other words, the same person may benefit from a one-time, intermittent or continuous period of three months.

In order to ensure the insurance of foreign nationals from the date of expiry of the period they are temporary, they must be notified to the Social Security Institution by the date of the expiry of the period of three months at the latest by their employers with statement of employment by submitting their foreign id number in electronical environment.

3.2. The situation of foreigners who are sent by and on behalf of an organization established in a country with which Turkey has signed a social security agreement

In case of a bilateral agreement between Turkey and the country where foreigners are temporarily assigned to Turkey, primarily the provisions of this agreement should be taken as basis. In practice, the importance of these agreements is the determination of the limit regarding temporariness as much longer periods in almost all of them.

First of all, the basic principle in bilateral social security agreements is that foreigners to be subject to the social security system of the country, where they work, according to the principle of territoriality (Circular of the Social Security Institution No. 2011/43).

There is an exception for those who are temporarily assigned by their employers to the country which is party to agreement; who work in international transport, embassies, consulates, missions and similar places, who are civil and military personnel of the sending country, who work in ships carrying the flag of one of the contracting parties, or the contracting party at the ports of the country. They will not be subject to the social security legislation of the country in which they work, but to the legislation of their country, in which they are already entitled to social security. The aim here is to avoid double insurance as mentioned above. There is no aim for insecurity with regards to social security.

It is necessary for the foreigner to submit the documents listed in bilateral agreements indicating that the foreigner's social security is provided according to the legislation of home country and issued by the social security institution where the foreign is coming from. In this case, the duration of the exemption is not the period of 3 months, but the period stipulated in the concrete agreement. The striking aspect of the bilateral agreements is that both the fact that periods longer than 3 months were envisaged, and additional periods are possible at the end of such periods.

The immunity for foreigners temporarily assigned to Turkey to social security system is not limited to those are subject to compulsory social insurance in their home country. Moreover, the ones who receive pensions because of their work subject to the social security legislation of home country cannot be regarded as insured for the period of temporary assignment stated in bilateral agreement.

After the expiry of the first assignment period, the request of extension of the temporary assignment is possible via informing the insurance institution in home country by the insured or his employer and forwarding the situation to the Social Security Institution by the institution of home country. Foreigners who are eligible for the extension of their temporary assignment shall continue to be exempted from the Turkish legislation during the extension period stipulated in the agreement.

Period for temporary assignments and extension periods stipulated in bilateral agreements to which Turkey is party are listed below.

Table 1: The Practices of Temporary Assignment Pursuant to Social Security Agreements Signed with Turkey

	Contract country	**Temporary assignment**	**Length**
1	Britain	Legislation applies to the country in which the insured is registered as long as temporary	
2	Germany	5 years	3 years
3	Netherlands	24 months	Up to the agreed period
4	Belgium	24 months	Up to the agreed period (Limited to 60 months in practice)
5	Austria	24 months	Up to the agreed period
6	Switzerland	24 months	Up to the agreed period
7	France	3 years	Up to the agreed period (Limited to 6 years in practice)
8	Denmark	12 months	Until the end of work (by agreement)
9	Swedish	12 months	12 months
10	Norway	12 months	Up to the agreed period
11	Libya	After 01.09.1985 there is permanent temporary worker practice	
12	Turkish Republic of Northern Cyprus	24 months	Up to the agreed period
13	Macedonia	24 months	Can be extended up to 60 months
14	Azerbaijan	24 months	Can be extended up to 60 months
15	Romania	24 months	Can be extended up to 60 months
16	Georgia	24 months	Can be extended up to 60 months
17	Bosnia and Herzegovina	24 months	Can be extended up to 60 months
18	Canada	24 months	Can be extended up to 60 months
19	Quebec	60 months	Up to the agreed period
20	Czech Republic	24 months	Up to the agreed period

21	Albania	24 months	Can be extended up to 60 months
22	Luxembourg	12 months	12 months
23	Italy	12 months	Up to the agreed period
24	Portugal	12 months	Up to the agreed period
25	Spain	12 months	Up to the agreed period

3.3. The situation of foreigners Coming to Turkey to Work Independently

Another group of foreigners provided immunity from working subject to social insurance are the ones who work independently on his own behalf without being assigned by a foreign employer. Obligatory social insurance provisions are not applicable to the foreign self-employed persons without any limitations on the time, provided that they reside in a foreign country and are subject to social security legislation of that country (Güzel/Okur/Caniklioğlu, 2016: 110). Regardless of the fact that there is a bilateral social security agreement between Turkey and the country of the foreign self-employed, the exemption is not limited with a certain period unlike temporarily assigned employees. At first glance, the lack of a time limit would seem to violate the foreigners' right to social security; the requirement for residency in foreign countries indirectly demonstrates the will of temporality.

The subject of residence is regulated in Civil Code. According to the Code "residence is the place where a person intends to live permanently. A person may not have more than one residence at the same time" (art. 19). As it is seen, the principle of uniqueness of residence is essential and determining the settlement of a person who operates in different places is important in terms of legal consequences. In doctrine, could be slightly different though, residence is defined as one's main centre of life activities and relationships (Dural/ Öğüz, 2017: 189). According to this, neither workplace nor family alone is the determining factor in identifying the residence. The concrete conditions of each case should be evaluated by taking into consideration of the centre of the person's life, the duration of the time spent in such place when determining the dominant place.

Within this framework, with regards to the exception about foreign self-employed persons not being insured, when determining residence, solely official records cannot be taken as basis. Foreigners automatically obtain residence permit in Turkey by getting work permit. By solely relying on that, residence of foreigners should not be considered as Turkey; for example, it should be checked whether their family lives in abroad or in Turkey; whether foreigners travel abroad regularly or not (Sözer, 2017: 112).

Residence of the foreign self-employed abroad does not justify him/ her not being insured in Turkey alone. Since one of the reasons behind the exception regarding foreigners is to avoid double insurance, the acceptance of foreigners who are not covered with social insurance in their home country as non-insured on the ground of their residence is contrary to the Convention No. 118. For this reason, it is necessary to prove that the right of social security in the country where the foreigner resides is documented by the documents issued by that country's authority.

4. CONCLUSION

In terms of social security as a fundamental human right, foreignness cannot be a valid reason for different treatment. For this reason, ILO Convention No. 118 concerning Equality of Treatment of Nationals and Non-Nationals in Social Security is of great importance. The aim is to prevent the foreigners' deprivation of social security due to the fact that they work in a country other than the country of nationality. In this case, the fact that the foreigners who work subject to social insurance in a country where they are national and where they reside or who get pension due to their own work are not adapted to Turkish social insurance scheme in order to prevent double insurance does not contradict the Convention No. 118

The fact that the foreigner works in a country other than home country, where he/ she is already insured, is expected to be temporary due to the nature of the work. In Law No. 5510 temporariness for employees is limited to 3 months except for the periods in bilateral social security agreements, but there is no time limit set for self-employed persons. As long as the residence of foreigners who work in Turkey is in a country where the foreigners are national of, and they have social security rights there; elimination of time limit could be considered as de lege ferenda as it is the case for self-employed persons. Nowadays, the activities of many enterprises continue in many countries at the same time on a world scale. This requires a single-hand operation of activities in different countries. In such an organizational structure, the assignment of employees in critical positions to different countries comes up frequently. Inclusion of such a foreign employee into Turkish insurance system after expiry of the period of 3 months results in a double insurance.

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THE SCOPE OF EMPLOYMENT SECURITY REGULATIONS FOR WORKPLACES UNDER TURKISH LABOR LAW

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ABSTRACT

Purpose- Within this study, we will examine that which establishments are falling under employment security regulations in Turkish Law.
Methodology - The range of employment security provisions related establishment will be discussed in the light of precedents of the Court of Cassation and views of scholars.
Findings- The questions as which persons should be included as an employee when determining the number of employees or how establishments operating in foreign countries will be evaluated, cause uncertainties and needs clearer explanations.
Conclusion- Precedents of the Court of Cassation about the scope of employment security related establishment differ from case to case. Therefore, employers should examine in detail the legal position in this matter before termination of employment contracts.

Keywords: Job security, establishment, termination, employee, employer
JEL Codes: K31, K41, J41

1. INTRODUCTION

Employment security -which can be defined as judicial scrutiny over termination of employee's labor contract by employer-, is regulated under Turkish Law and in particular under Articles 18-21 of Labor Law numbered 4857. As per Article 18 of Labor Law: "The employer terminating the labor contract with indefinite term executed with his employee -who is employed in a workplace where thirty or more employees are employed and who meets a minimum seniority of six months-, must rely on a valid reason for such termination that arises from the capacity or conduct of the employee or from the operational requirements of the business, workplace or service." If the employee falls within the scope of the relevant article, i.e. he is protected by employment security, the employer is obliged to comply with the specific procedures envisaged for termination of labor contract and to rely on a valid reason. If the employer cannot prove that the termination is based on a valid reason, the employee can file a reemployment lawsuit before court.

Article 18/4 of the Labor Law constitutes the exception to the rule of excluding workplaces that employ less than 30 employees as per Article 18/1 Labor Law. In this regard, Article 18/4 of Labor Law regulates that if employer has multiple workplaces, all belonging to the same business field, the total number of employees working in all workplaces is considered to be the total number of employees in each workplace. Within the scope of both paragraphs of the same article, some problems cause uncertainty, these include which employees are to be taken into consideration in calculating the total number of employees and how workplaces located overseas are to be evaluated. This study is going to evaluate which workplaces are within the scope of employment security in the light of high court decisions and doctrine. It will be discussed firstly which types of employees will be taken into consideration in calculating the number of 30 employees. Another problem by determining of the number of 30

employees is calculating the number of employees working on the basis of joint employment and working at the companies with organic bonding. One more issue discussed at this article is the situation of employees working at employer's workplace located overseas in the calculation of 30 employees. Furthermore, the point in time based on which the calculation of 30 employees is examined at this paper.

2. FINDINGS AND DISCUSSIONS

2.1. Points That Will Be Taken into Consideration for the Calculation of 30 Employees

Determination of which person will be taken into consideration as an employee in calculating the number of 30 employees -which is the criterion for determining whether a workplace fall within the scope of employment security- is a problem that should be solved initially. In the decisions of Court of Cassation, it is clearly stated for the purpose of this calculation that no differentiation can be made between the employees working on different types of labor contracts i.e. labor contracts with definite or indefinite term; full time or part time labor contracts; permanent or seasonal labor contracts. Existence of labor contracts of employees that will be included in the calculation are sufficient and these employees do not have to work in practice at the time termination notice is served. However, if a substitute employee is employed to take up the tasks of the absent employee who is on leave due to illness, occupational accident and pregnancy or similar grounds also including normal leave, the substitute employee will not be taken into consideration in the calculation of 30 employees(Celik, Caniklioğlu, Canbolat, 2018: 479; Narmanlıoğlu, 2014: 498; Kaplan-Senyen, 2018: 276). As per Article 18/5, Labor Law, employer's representatives and their assistants -who do not benefit from employment security due to their position, shall also be taken into consideration in the calculation of the number of employees in a workplace (The decision of the Court of Cassation 9. Civil Chamber dated 24.05.2018 with merit number of 2018/4616 and decision number of 2018/11626; the decision of the Court of Cassation 22. Civil Chamber dated 24.04.2018, with merit number of 2018/2914, and decision number of 2018/9559; the decision of the Court of Cassation 9. Civil Chamber dated 12.4.2018 with merit number of 2017/23664, and decision number of 2018/8529; the decision of the Court of Cassation 22. Civil Chamber dated 5.3.2018, with merit number of 2018/1480, and decision number of 2018/5708; the decision of the Court of Cassation 22. Civil Chamber dated 12.02.2018, with merit number of 2017/45888, and decision number of 2018/2713; the decision of the Court of Cassation 9. Civil Chamber dated 18.12.2017 with merit number of 2016/32626, and decision number of 2017/21574; the decision of the Court of Cassation 22. Civil Chamber dated 12.12.2017 with merit number of 2017/43958 and decision number of 2017/28461; the decision of the Court of Cassation 9. Civil Chamber dated 22.11.2017 with merit number of 2016/28027 and decision number of 2017/18860).

According to the established case-law of the Court of Cassation, the following will not be taken into consideration in the calculation of 30 employees in a workplace: apprentices, interns and students taking vocational training, all of whom are not employees and casual employees, as well as those that are employed under temporary working relations and sub-employers' employees. If an illegal sub-employment is constituted in order to avoid employment security provisions, relevant employees shall also be included to the number of employees in the workplace. Additionally, employees of the sub-employer and temporary employees who sustain their labor contract with their employer who provides temporary employees are also taken into consideration in the calculation of the number of employees in their own respective workplaces (The decision of the Court of Cassation 9. Civil Chamber dated 24.05.2018 with merit number of 2018/4616 and decision number of 2018/11626; the decision of the Court of Cassation 22. Civil Chamber dated 24.04.2018 with merit number of 2018/2914 and decision number of 2018/9559; the decision of the Court of Cassation 9. Civil Chamber dated 12.4.2018 with merit number of 2017/23664 and decision number of 2018/8529; the decision of the Court of Cassation 22. Civil Chamber dated 5.3.2018 with merit number of 2018/1480 and decision number of 2018/5708; the decision of the Court of Cassation 22. Civil Chamber dated 12.02.2018 with merit number of 2017/45888 and decision number of 2018/2713; the decision of the Court of Cassation 9. Civil Chamber dated 18.12.2017 with merit number of 2016/32626, and decision number of 2017/21574; the decision of the Court of Cassation 22. Civil Chamber dated 12.12.2017, with merit number of 2017/43958 and decision number of 2017/28461; the decision of the Court of Cassation 9. Civil Chamber dated 22.11.2017 with merit number of 2016/28027 and decision number of 2017/18860).

If there is an employee whose labor contract is terminated before the termination notice applies for reemployment after obtaining a favorable court decision ordering for invalidity of the termination, this employee shall also be taken into account in the calculation of 30 employees. In such case, if the invalidation action against the termination has not been concluded yet, then the outcome shall be awaited by the Court by rendering this matter as a preliminary issue to the case in hand.

2.2. Joint Employment and the Matter of Organic Bond

The existence of joint employment and organic bonding may also lead to problems in terms of determining the number of employees within the scope of employment security.

The employee is not obliged to give his full labor force to one specific employer, he can execute labor contracts with multiple employers at the same time (Mollamahmutoglu/Astarlı/Baysal, 2018: 38; Süzek, 2018: 156). It is legally possible for an employee to work with multiple employers for various jobs under part time labor contracts and it is also possible for an employee to have multiple employers under the same labor contract envisaging the same job for the same period. The latter is the joint employment. In such relation, although there are multiple employers as the contracting parties, there is still one labor relationship. In joint employment, each employer aim to have an employee who will work full time, therefore employers are jointly liable against the employee as per Article 162 and the following articles of Turkish Code of Obligations. Accordingly, each employer is entitled to the rights arising from the labor law regulations and the labor contract and also responsible for the obligations arising from these sources.

In the decisions of Court of Cassation, it is stated that some employees jointly serve to multiple employers at the same time under the joint employment scheme which is observed in particular within group companies. The established case-law of Court of Cassation adopted the following approach: "These companies, which are mostly related with each other under the management organization, can serve in the same buildings, and some employees perform their obligations to work in favor of all employers. The following can also be given as examples for this matter: the administration of all companies carried out by the same person, the accounting, security, transportation, cleaning, cafeteria and catering services provided to all of the employers. In such a relationship, only employees who serve to all companies and employees who serve the defendant company should be taken into consideration in the criterion of 30 employees. If the employee is serving to all companies, then the number of employees in all companies should be taken into account" (The decision of the Court of Cassation 9. Civil Chamber. dated 12.4.2018, with merit number of 2017/23664, and decision number of 2018/8529; The decision of the Court of Cassation 22. Civil Chamber. dated 5.3.2018, with merit number of 2018/1480, and decision number of 2018/5708; The decision of the Court of Cassation 9. Civil Chamber. dated 18.12.2017, with merit number of 2016/32626, and decision number of 2017/21574; The decision of the Court of Cassation 22. Civil Chamber. dated 12.12.2017, with merit number of 2017/43958, and decision number of 2017/28461; The decision of the Court of Cassation 9. Civil Chamber. dated 22.11.2017, with merit number of 2016/28027, and decision number of 2017/18860; The decision of the Court of Cassation 9. Civil Chamber. dated 18.10.2017, with merit number of 2016/35565, and decision number of 2017/16089; The decision of the Court of Cassation 9. Civil Chamber. dated 13.9.2017, with merit number of 2016/18638, and decision number of 2017/13164; The decision of the Court of Cassation 22. Civil Chamber. dated 27.3.2017, with merit number of 2017/30583, and decision number of 2017/6245).

In the organic bond relations, a legal person standing as an employer includes different personalities in the representation in order to prevent the employee from exercising his rights arising from labor contract or the labor law. In this case, the independence of the legal person shall be limited and be deemed to be on the same legal footing as the entity with whom the former has the organic bond. Court of Cassation holds liable the real employer or all the employers with whom the former has the organic bond by lifting the corporate veil. Organic bond can be determined by the fact that relevant companies' addresses, fields of activity, partners and representatives are the same. Additionally as per the decision of Court of Cassation: "Employees serving to all employers together with the employees whose transfer has been made do not have to be working in the same business field under the organic bond scheme or joint employment regardless of the nature of the operation." (The decision of the Court of Cassation 9. Civil Chamber. dated 22.11.2017, with merit number of 2016/28027, and decision number of 2017/18860; The decision of the Court of Cassation 9. Civil Chamber. dated 18.10.2017, with merit number of 2016/35565, and decision number of 2017/16089; The decision of the Court of Cassation 9. Civil Chamber. dated 18.12.2017, with merit number of 2016/32626, and decision number of 2017/21574; The decision of the Court of Cassation 9. Civil Chamber. dated 7.6.2018, with merit number of 2018/5425, and decision number of 2018/12840; The decision of the Court of Cassation 9. Civil Chamber. dated 14.3.2018, with merit number of 2018/1959, and decision number of 2018/5292; The decision of the Court of Cassation 22. Civil Chamber. dated 5.3.2018, with merit number of 2018/1480, and decision number of 2018/5708).

2.3. Issue of Employer's Workplaces Abroad

Another point to be discussed is whether or not employees working at employer's workplace located overseas should be included in the calculation of 30 employees. Court of Cassation has different decisions regarding this matter. For instance, in its decision dated 3 July 2006, the Court reversed the judgment of the first instance court that based its decision on the territoriality of laws and stated that "it makes sense that there is no explicit provision stating that the employees working in the

workplaces located abroad operating in the same business field will not be taken into consideration. In other words, there is no legal provision stating that workplaces in the same business field will be evaluated only if they are within the borders of the country. Therefore, the Court should act in favor of the employee and accept that the legal requirements in terms of the number of employees are met by taking into account of all the workplaces belonging to the defendant employer, who clearly and definitely has other workplaces in the same business field" (The decision of the Court of Cassation 9. Civil Chamber. with merit number of 2006/9818, and decision number of 2006/19560). This decision has been criticized in the doctrine quite frequently (Aygül, Uşan, 2007: 75; Odaman, 2007: 82; Tuncay, 75). When more recent decisions are studied, it can be seen that a different chamber of Court of Cassation decided that even if the workplaces located overseas belonging to the employers located in Turkey who have a separate legal personality have organic bond with their counterparts in Turkey, the employees working overseas are not to be taken into account in the calculation of 30 employees (The decision of the Court of Cassation 22. Civil Chamber. dated 18.3.2013, with merit number of 2013/36274; and decision number of 2013/30274). However, in its even more recent decision, Court of Cassation 9. Civil Chamber decided that "in the calculation of 30 employees, employees who work overseas shall also be taken into account due to the fact that the defendant company is affiliated abroad" (The decision of the Court of Cassation 9. Civil Chamber dated. 24.10.2017, with merit number of 2016/27342; and decision number of 2017/16504).

2.4. The Point in Time based on which the Calculation of 30 Employees is to be Made

Another crucial point in determining whether a workplace falls within the scope of employment security is the point in time based on which the calculation of 30 employees is to be made. The method applied by Court of Cassation on this issue is to use the records of the Social Security Institution as a basis in order to determine the number of employees working in the workplace at the time of termination. The decisions of Court of Cassation on this matter clearly show that courts must render their decision after obtaining the valid payrolls of all employees from Social Security Institution at the time of the termination which information is then to be used to calculate the number of employees working in the same business field at the different workplaces belonging to the same employer across Turkey (For instance: The decision of the Court of Cassation 22. Civil Chamber. dated 05.07.2018, with merit number of 2018/9136, and decision number of 2018/17177). However, Court of Cassation also has decisions in which it diverges from this principle by requiring a research that is to be carried out on whether the nature of the work requires 30 employees. For example, in its decision rendered in 2017, Court of Cassation stated that not only the time of the termination must be taken into account in the calculation of the required number of employees but also the number of employees who are employed regularly in the workplace and whether or not 30 employees are needed for the proper functioning of the workplace and lastly if these criteria are satisfied at the time of the termination (The decision of the Court of Cassation 9. Civil Chamber. dated 22.11.2017, with merit number of 2016/28027, and decision number of 2017/18860).

3. CONCLUSION

Under Turkish Law, the majority of the problems associated with the requirement of having 30 employees employed at a workplace -which is one of the requirements to benefit from employment security provisions- have been resolved by established and accurate decisions of the Court of Cassation. The following are the subjects that have been discussed since the effective date of the applicable provisions which are resolved by the Court of Cassation: which employees will be taken into consideration in the calculation of the number of employees and which will not, how the employees -who filed an invalidation lawsuit against the termination- will be evaluated for determining 30 employees, how the calculation will be made in cases of joint employment and organic bond. The case law, which is not consistent in terms of determining which workplaces and businesses are covered by employment security, is rendered on the following subjects: whether the employees working in the workplaces located overseas will be included in the number of 30 employees and which point in time will be considered as the basis for the calculation of 30 employees.

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IS BITCOIN BECOMING AN ALTERNATIVE INVESTMENT OPTION FOR TURKEY? A COMPARATIVE INVESTIGATION THROUGH THE NON-LINEAR TIME SERIES ANALYSIS

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ABSTRACT

Purpose - The main purpose of this study in determine whether Bitcoin is becoming an alternative investment option compared to other financial instruments in Turkey. To perform analysis for this purpose, we created sample includes Bitcoin, Bist 100 National Index, Bond, Euro and Gold. We calculated daily returns in terms of % for each type of instrument for the period range from 02.02.2012 to 17.12.2018.
Methodology - In the study, we tested the stationarity of the series and the causality relationships between the series through the non-linear unit root and causality tests. Stationarity of the series and causality relations between them are determined with the help of charts. Both in unit root test and in causality test, firstly we obtained test statistics and normalized them by using critical values then transferred them to the charts. In order to decide about when test statistics is higher than critical values null hypothesis is rejected.
Findings- Bitcoin, Usd, Gold and Bond are found non-stationary for the whole period. We find out that returns of Euro is more stable than Usd. Bitcoin has been fluctuating during all period except for first months of 2013 while Gold's returns are intensively volatile when politic and economic risks are increasing. This show investors in Turkey still consider Gold as safe port for their investments. Usd currency is volatile for all period because of its increasing demand all over the world. In causality test we observed that there is a causality relation from Bitcoin's returns to Bist 100 returns. This result shows that Bitcoin is becoming an alternative (substitute) investment tool for domestic and foreign investors compared to Borsa Istanbul. There is more causality relation between Bitcoin and Gold than Bitcoin and Bist 100.
Conclusion- Based on the findings of this analysis, , it may be accepted that Bitcoin has been becoming an alternative investment/savings tool for the Turkey case. Regulatory institutions should create a required legal framework for the Bitcoin because Bitcoin has a great potential to prevent of tax evasion, the terminate the informal economy and eliminate intermediation costs.

Keywords: Bitcoin, Non- Linear Unit Root Test, Non- Linear Causality Test, Varying Time Series, Borsa Istanbul.
JEL Codes: C22**,** G10, G11

1. INTRODUCTION

Money has been used as a exchange tool in the economy for centuries. Money as an economic unit of measurement, which is considered equal to the value of the related goods and services in process of transfer from seller to buyer, has the most fundamental impact on the formation and spread of trading activities. In the absence of this unit of measurement, which is used by all for the purpose of commercial operations, goods and services were being transferred from the seller to the buyer sides through the swap transaction called barter and people would have to give objects with a higher value in exchange to these mentioned goods and services, then common economic exchange values that everyone could use were found (Ateş, 2016:352). Nowadays, the enormous developments in information technologies have affected the financial system and the money has started to be produced under the name of Crypto Currency by taking a new form (Hepkorucu and Genç, 2017 : 48).

Crypto currency is defined as the digital value that enables secure transaction processing through encryption and the creation of additional virtual Money (Çarkacıoğlu, 2016:8). Cryptology has been used in the process of ensuring the

reliability for money supply and financial transactions and its first theoretical framework was established in 1998 by Wei Dai (Gültekin and Bulut, 2016:83). These currencies are available as virtual and digital.

Among the crypto Money types, nowadays Bitcoin is one of the most popular topics in finance environment. Bitcoin is an encrypted and universal electronic money designed in 2008 by people or individuals with the nickname Satoshi Nakamoto (Atik et al. 2015:249). Particularly due to abnormal price movements, Bitcoin is defined as a risky instrument according to some analysts, while it is defined as a profitable investment tool by other analysts. Unlike conventional paper currency circulation, bitcoin can be defined as the virtual currency produced in the digital platform.

The main features that differentiate the Bitcoin virtual currency from the classic currency concept are (Atik et al. 2015:249)

- There is no supply center. In other words, control is not carried out by the person, company or countries.
- It is traded on a peer-to-peer network. This network can make its own network configuration without the server.
- Crypto technique was used in its production and circulation.

In addition, the upper limits for the amount of bitcoin in circulation are defined and the total amount of bitcoin is limited to 21 Million (Hepkorucu and Genç, 2017 : 48).

2. DATA AND METHODOLOGY

In this study, interactions among the crypto-currency (Bitcoin), Borsa Istanbul Stock Exchange (BIST), foreign exchange currencies, bonds and gold were analyzed using the data belong the 02.02.2012-17.12.2018 period. Data and types can be seen in Table 1.

Table 1: Data Types Used In the Study

INSTRUMENT	TYPE
Bitcoin (BITCOIN)	Cryptocurrency
BIST 100 national index	Equity (Borsa Istanbul)
USD and EUR	Foreign Currencies
24 Gram Gold	Gold
10 years term government bond	Bond

All variables in the analysis are included in the calculation based on their daily returns. The data were obtained from the tradingeconomics.com. In the selection of the analysis period, the broadest time range (beginning from the first date of bitcoin to the latest date for this analysis) was taken into consideration. Finally, the study was carried out using 1705 daily data.

In this study, the stability of the series was examined through the KSS time-varying nonlinear unit root test developed by Kapetanios, Shin and Snell (2003). The existence of causality relationships between the series was analyzed via the LBGC time-varying nonlinear causality test developed by Li, Balcılar, Gupta and Chang (2016).

2.1. Unit Root Test

Linear unit root tests acknowledge that the series is stationary over time and give a single result for the whole period. However, series may be stationary in some parts of the time range, while in others it may not be stationary. In order to reveal this, in this study, the stationarity of the series was examined by the time-varying and non-linear unit root test (KSS) developed by Kapetanios, Shin and Snell (2003). The abbreviation was created using the initials letters of the authors'

surname. This approached has been already used in the literature such as Yılancı (2009), Ağazade (2014); Destek and Okumuş (2016).

In this test, it is also taken into account that the stationary of the series may vary over time and they may not be linear. The KSS test is based on a single-variable, Smooth Transition, one-degree autoregressive model STAR(1)) :

$$y_t = \beta y_{t-1} + \gamma y_{t-1}\Theta(\theta; y_{t-d}) + \varepsilon_t, \qquad t = 1, \dots, T \tag{1}$$

$$\Theta(\theta; y_{t-d}) = 1 - \exp\left(-\theta y_{t-d}^2\right) \tag{2}$$

Here $\varepsilon_t \sim iid(0, \sigma^2)$, $\Theta(0)=0$ and $\lim_{x \to \pm\infty} \Theta(x) = 1$. From here, the exponential STAR (ESTAR) model can be established through using Equation (1) and Equation (2):

$$y_t = \beta y_{t-1} + \gamma y_{t-1}\left[1 - \exp\left(-\theta y_{t-d}^2\right)\right] + \varepsilon_t \tag{3}$$

$$\Delta y_t = \phi y_{t-1} + \gamma y_{t-1}\left[1 - \exp\left(-\theta y_{t-d}^2\right)\right] + \varepsilon_t \tag{4}$$

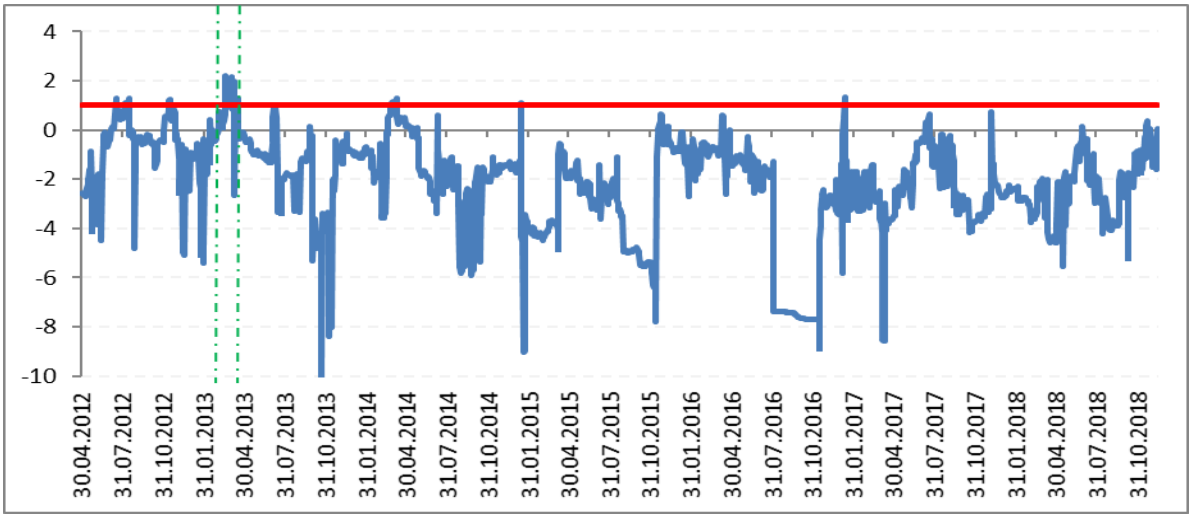
Here $\phi = \beta - 1$. If $\theta > 0$ then equation (4) effectively determines the average inversion speed. The null hypothesis of the KSS test is that the series is not stationary.

In KSS method, in which period the series is stationary is analyzed via the charts. In this context, firstly test statistics are obtained[1] then these values are normalized by using critical values[2] and in the last stage, they are transferred to the graphics environment. When deciding on this test, the null hypothesis is rejected when the Calculated Test Statistics is higher than the Critical Value. To perform normalization in this test, both sides of the inequality shown as Calculated Test Statistics> Critical Value is divided into Critical Value. Thus, when the new test statistic is greater than 1, in other words, when the chart located above y = 1, the null hypothesis is rejected and it is determined that the series are stationary.

In this method, when calculating the test statistics, at the beginning a window is created by taking a certain number of observations (60 in this study) and then a test statistic is calculated for this group. Then each time one observation is left from the beginning, a new observation is added to end, and the window (60-period period) moves along the time frame and thus test statistics are generated for the subsequent periods. Due to this operating mechanism, the test is also called Unit Root Test in Floating Windows oolling Window Unit Root Test. Since it uses different test statistics for the subsequent periods, this method also called as time-varying unit root test.

KSS unit root test was performed for BITCOIN series and the results are presented in Chart 1

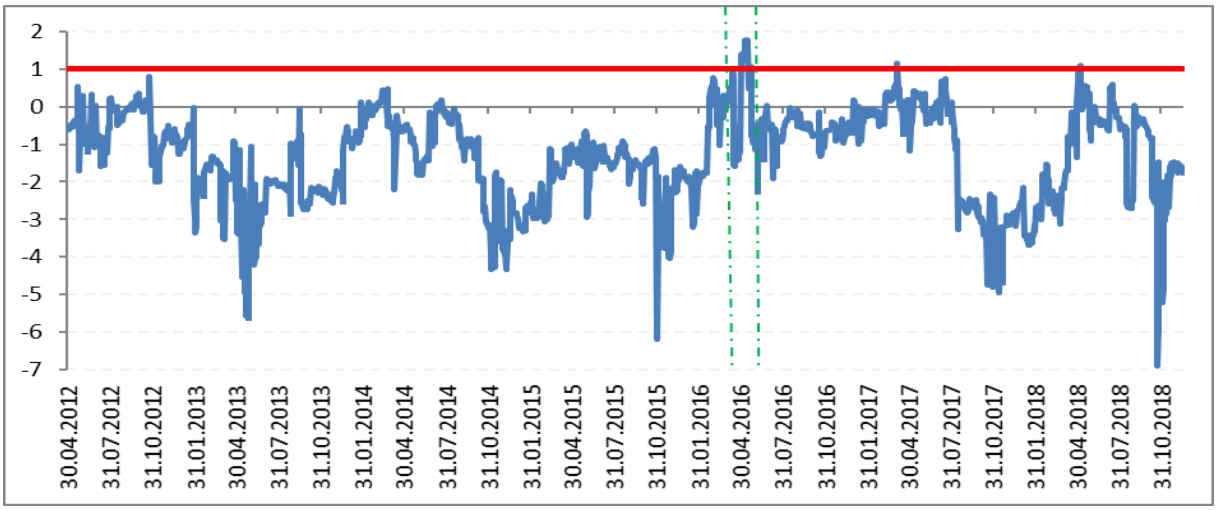
Chart 1: KSS Unit Root Test Chart for BITCOIN Series



[1] Test statistics are produced with a 1000 iterative bootstrap cycle.
[2] The asymptotic critical value can be obtained from Kapetanios, Shin and Snell (2003: 364) Table 1, Case I.

According to Chart 1, the returns of BITCOIN seem stationary in the first months of 2013 but it is not possible to mention this situation for the other periods. This is important because it shows that BITCOIN prices have not stabilized yet and have significant fluctuations. In order for investors to trust a financial instrument, the continuity and price stability of the financial instrument have great importance. Therefore, it will be exceedingly useful both national and international regulatory and supervisory agencies are engaged and to place the BITCOIN market on a legal and stable environment. The results of the KSS unit root test for the BIST 100 series are shown in Chart 2.

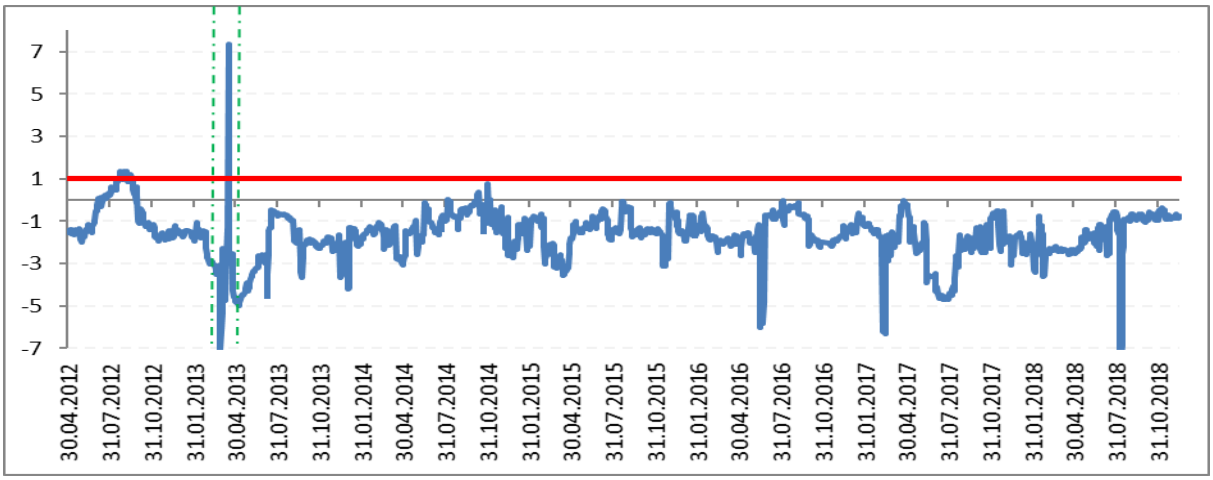
Chart 2: KSS Unit Root Test Chart for BIST 100 Series



According to Chart 2, the return of BIST 100 is stable in the middle of 2016, while it is not stationary in other periods. This shows that Turkey's stock exchange has a quite fluctuating structure. This result keeps investors away from the stock market and limits increase of financial markets in terms of depth and diversity in Turkey. Therefore, Borsa İstanbul, publicly traded companies (listed companies) and regulatory authorities should give particular importance to ensuring stability in Borsa Istanbul. One of the most important reasons for this volatility is the share of foreign investors in Borsa Istanbul up to 74%. Foreign investors operating in Borsa Istanbul can quickly leave the stock exchange or move their assets to Borsa İstanbul in response to domestic or international changes and developments. This causes significant fluctuations in the returns of stocks traded in Borsa Istanbul. At this point it may be useful to install a Tobin Tax type[3] braking system.

The results of the KSS unit root test for Gold series are given in Chart 3.

Chart 3: KSS Unit Root Test Chart for Gold Series

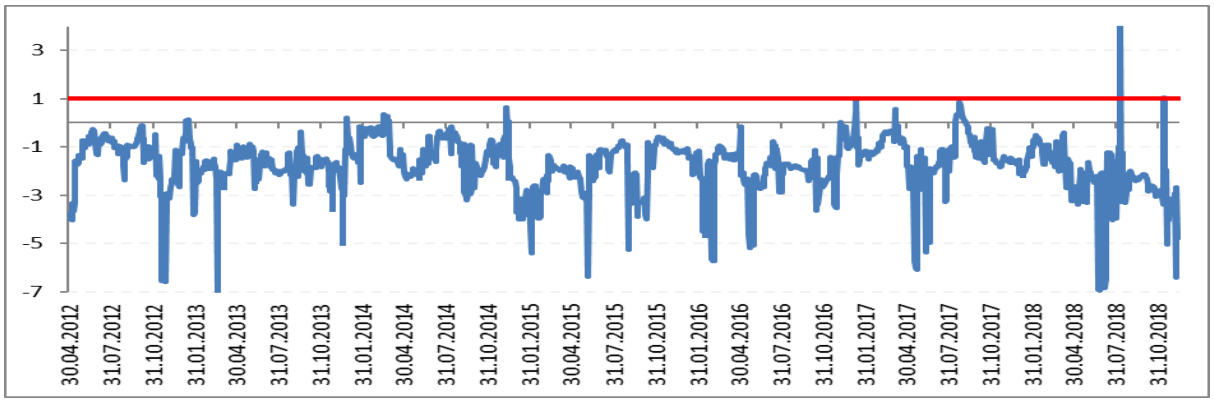


[3] Tobin Tax is a type of tax that is expected to be applied to foreign exchange transactions in order to prevent the economic and financial fluctuations caused by the speculative capital flows developed by James Tobin won the Nobel Prize for Economics (Ay and Mangır, 2007).

According to Chart 3, the return of gold series was observed as stable in March 2013 but not in other periods. This finding shows that Gold prices have a highly volatile nature in Turkey. However, gold is considered the most stable investment tool by Turkish society. The reason for this volatility in gold returns is that the price of gold in countries like Turkey is both affected by the increase in USD currency rate and the rise in world gold prices. Especially in the period when economic and political risks increase in the country, the demand for Gold in Turkish society is increasing, which in turn causes fluctuations in the yield of Gold. Chart 3 shows significant fluctuations in gold returns during the period of the coup attempt dated July 15, 2016, in the referendum period of 16 April 2017 and in the period of August 14, 2018 when the dollar tested the upper limit of 7 TL. The management of Istanbul Gold Exchange which was established on July 26, 1995 (Borsa İstanbul, 2018) in order to ensure stability in gold prices and to bring the gold held by the household as under-the-mattress savings to the economy has an important key role for this purpose.

The results of the KSS unit root test for the USD series are presented in Chart 4.

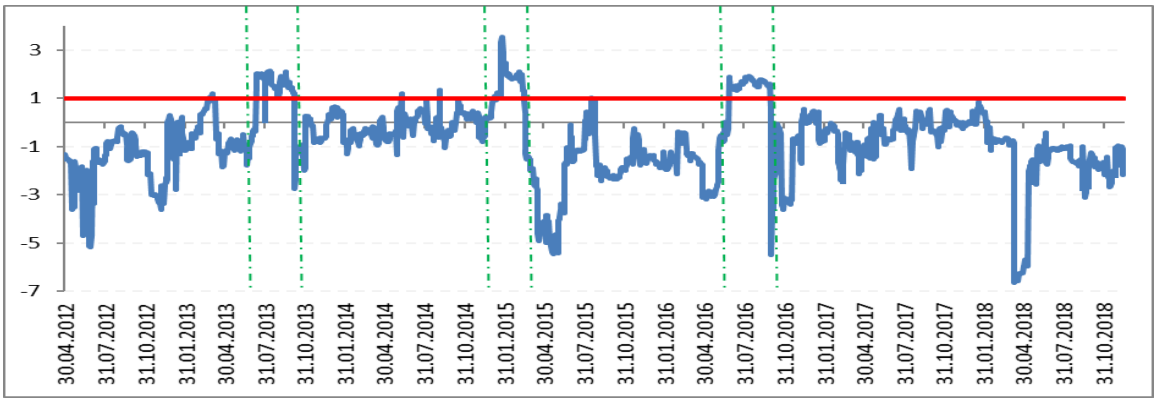
Chart 4: KSS Unit Root Test Chart for Usd Series



According to Chart 4, the USD returns showed an abnormal fluctuation in August 2018, when the Dollar tested above 7 TL. Afterward, it was stable for a short-term but during the next periods, it continued to fluctuate. Based on this result, it can be said that USD currency and its demand has a volatile structure in Turkey. Turkey is one of the countries with high USD demand stemming from some reasons such as performing a large part of foreign trade volume via the USD currency, the vast majority of external debt is based on USD currency, and dollarization activities which is triggered by economic actor's confidence feelings related to USD currency. Rest on this observation, it is useful to take the necessary measures in this field and try to make the USD rate more stable. It may be stated that the CB of Turkey successfully managed the Dollar crisis in August 2018. However, it is beneficial for managers to continue to be sensitive about this issue. One of the most important factors lie behind on this instability of Usd currency rate is the since May 2013, a gradual decrease of the expansionary monetary policies implemented by the US Federal Reserve (FED) after the 2008 global economic crisis. And since October 2014, the Fed has been applying tightening monetary policy and it has been increasing interest rate levels gradually.

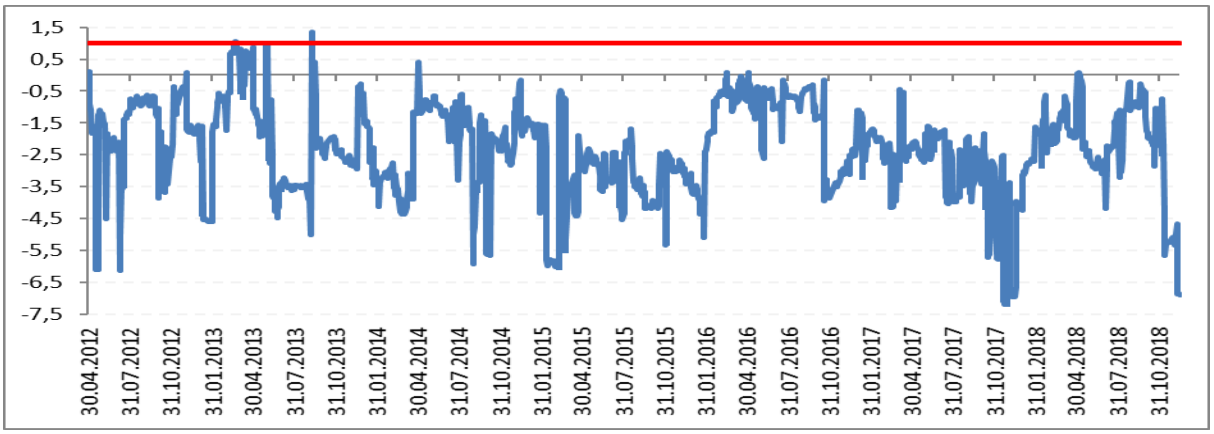
The results of the KSS unit root test for the EURO series are given in chart 5.

Chart 5: KSS Unit Root Test Chart for Euro Series



According to Chart 5, the return of the Euro is more stable than the Dollar. In the third quarter of 2013, in the first quarter of 2015 and in the third quarter of 2016, the return of the Euro was stable. Starting from this chart, for investors in Turkey instead of investment in USD currency it can be stated that preferring Euro investment may be more logical and reasonable. It may also be useful for economic administration to convert reserve assets and foreign debts of the country into Euro instead of Usd. Similarly, private companies may also convert their Usd debt to Euro through the swap transactions. The results of the KSS unit root test for TAHVIL series are given in Chart 6.

Chart 6: KSS Unit Root Test Chart for Bond Series



According to chart 6, the yields of government bonds in Turkey in mid-2013 became partly stationary (stable), it has fluctuated in general. Therefore, the demand of individual investors, firms and foreign investors to Turkish Government Bonds is adversely affected. It is very useful for policy makers to take measures to ensure financial stability in the country.

2.2. Causality Test

Linear causality tests can test the presence or absence of a single causal relationship valid for the whole time period. However, the causality relations between the series can change over time due to the structural changes experienced due to economic and social developments (Tang and Jang, 2009). While there is no causality relationship between two series in a certain period, causality relationship can be seen in the sub-sample dimensions. (Balcılar vd. 2016). This stability of causality relationship can be tested by using time-varying causality analysis. In this study, the existence of causality relations between series analyzed via the time-varying and non-linear LBGC causality test developed by Liv et al. (2016). In this test, it is also taken into consideration that the causality relations between the series can vary over time and the series may not be linear. The null hypothesis of the LBGC test is that there is no causality relationship between the series.

This test consists of the combination of Hacker and Hatemi-J (2006) test, Hatemi-J (2012) test, Kapetanios, Shin and Snell (2003) test. This method is superior to other tests in that it can reveal the causal relationships that exist in some periods of the analysis period. Hatemi-J (2012) proposes a new method for the accurate determination of the lag length: He names this method as Khatami-J Criterion (HJC) which is the combination of Schwarz and Hannan-Quin methods and calculates as follows:

$$HJC = Ln\left(det\widehat{\Omega}_j\right) + j\left(\frac{n^2 LnT + 2n^2 Ln(LnT)}{2T}\right), \quad j = 0, \dots, p \qquad (5)$$

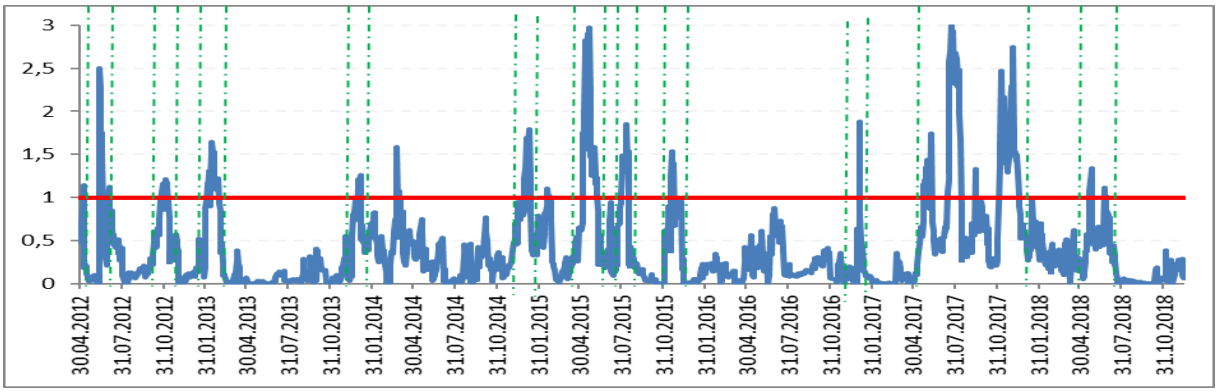
In the formula $\widehat{\Omega}_j$; is the maximum probability estimate of the covariance matrix of the VAR model with the number of delays. T shows the time dimension.

In the LBGC method, in which periods there is a causality relationship between the series is analyzed through the charts. In this context, firstly test statistics are obtained, then these values are normalized by using critical value and in the last stage, they are transferred to the chart environment. When deciding on this test, the null hypothesis is rejected when the Calculated Test Statistics is higher than the Critical Value. To perform normalization in this test, both sides of the inequality shown as Calculated Test Statistics> Critical Value is divided into Critical Value. Thus, when the new test statistic is greater than 1, in other words, when the chart located above y = 1, the null hypothesis is rejected and it is determined that there is causality relation from series 1 to 2.

In this method, when calculating the test statistics, at the beginning a window is created by taking a certain number of observations (60 in this study) and then a test statistic is calculated for this group. Then each time one observation is left from the beginning, a new observation is added to end, and the window (60-period period) moves along the time frame and thus test statistics are generated for the subsequent periods. Due to this operating mechanism, the test is also called causality relation Test in Floating Windows or Rolling Window causality relation. Since it uses different test statistics for the subsequent periods, this method also called as time-varying causality test (Yılancı and Bozoklu, 2014:215).

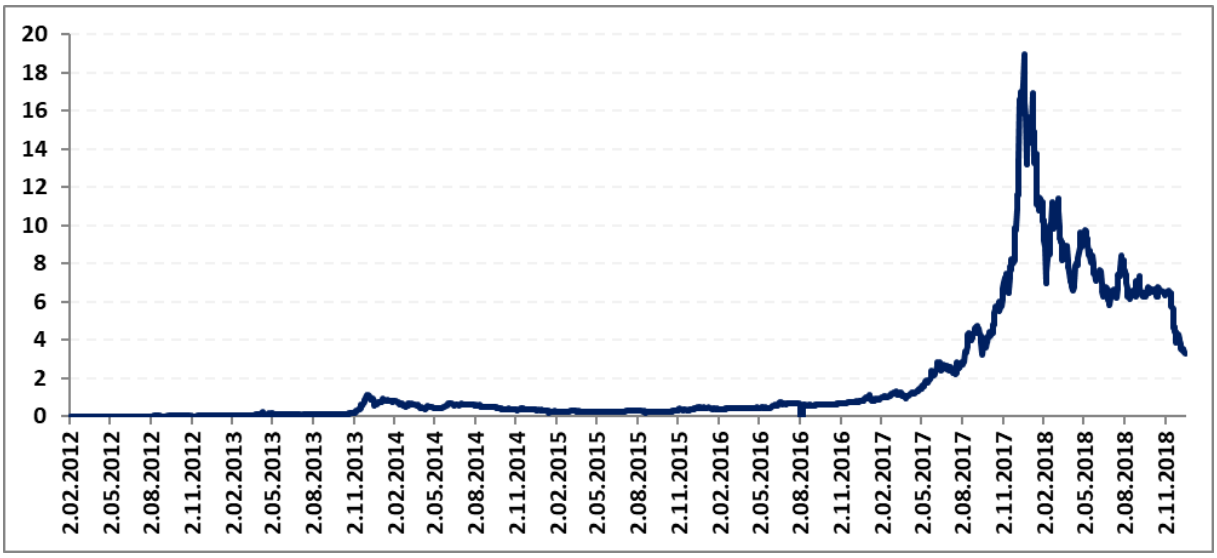
In this study, the LBHC causality test from BITCOIN series to BIST 100 series was performed and the results are presented in Chart 7.

Chart 7: Causality Relationship from The Bitcoin to BIST 100



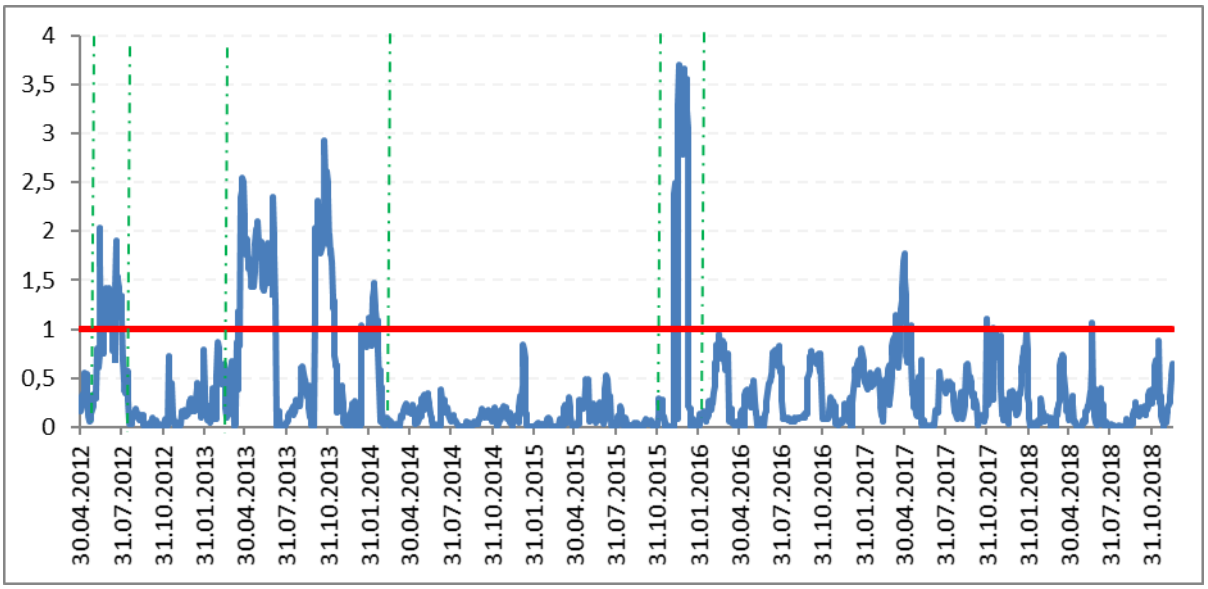
According to Chart 7, from Bitcoin's return to Bist 100 return, there is causality relationship in June 2012, October-November 2012, February 2013, January 2014, January 2015, May-June 2015, August 20152, November 2015, May-June 2017, July-August 2017, November-December 2017 and May 2018. Based on this finding, it may be stated that there is a significant causal relationship between Bitcoin's return and Borsa İstanbul's return. This shows that Bitcoin is becoming an alternative (substitute) investment tool for domestic and foreign investors compared to Borsa Istanbul. Therefore investors take into account the Bitcoin and other sub-coins along with the stocks. It is time to mention that both Borsa İstanbul management and macro economy policymakers should take the Crypto Coins more seriously and prepare a legal basis for it. In the causality relationship between Bitcoin and the BIST 100 in 2017, the increase in Bitcoin prices in the related period is considered to be effective. Changes in bitcoin prices can be viewed through the Chart 8 as follows:

Chart 8: Change in Bitcoin Prices



The results of the LBHC causality test from the return of Bitcoin to the return of Gold are presented in Chart 9.

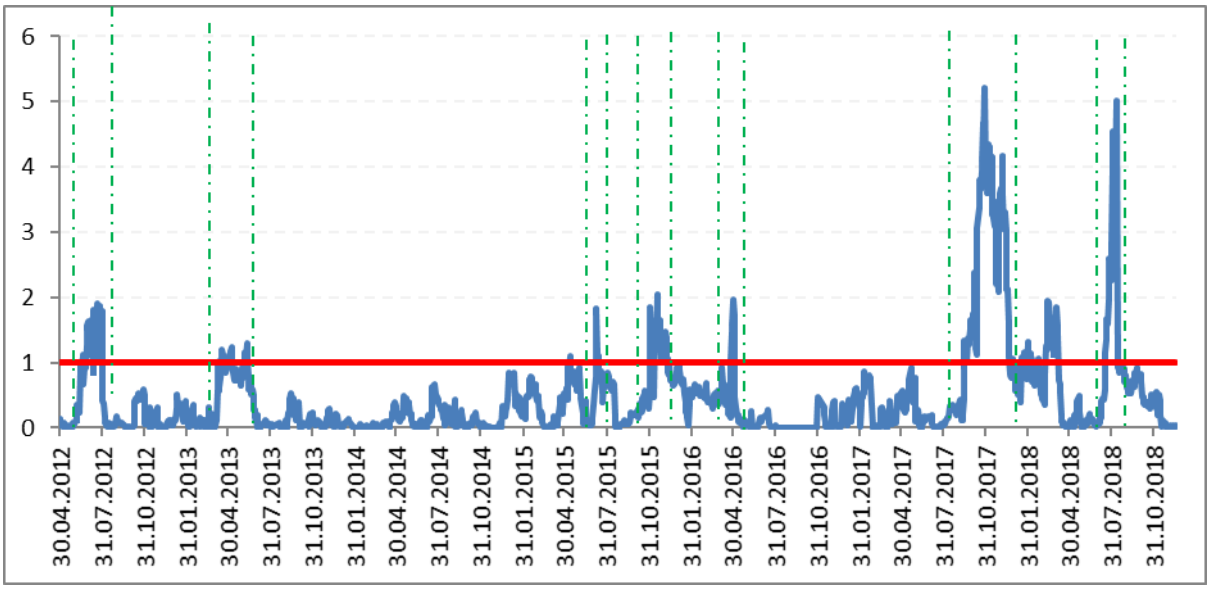
Chart 9: Causality Relationship From Bitcoin to the Gold



According to Chart 9, there is a causality relationship from the return of Bitcoin to the return of Gold in June-July 2012, April-July 2013, October-November 2013, January-February 2014, December 2015-January 2016 and April 2017. What is interesting here is that in 2017 when Bitcoin prices increased by 19 times, there was no causality relation between Bitcoin and the gold. This shows that Bitcoin is preferred by investors who prefer to take more risks, while gold is preferred by investors who want robust and stable investment instruments. Causality from Bitcoin towards to Gold was observed in less frequency than from Bitcoin to Bist 100 during the analysis period. This situation shows that Bitcoin has more substitute relationship with Bist 100 when compared to Gold.

The results of the LBHC causality test from the return of Bitcoin to the return of USD are given in Chart 10.

Chart 10: Causality Relationship From Bitcoin to the USD

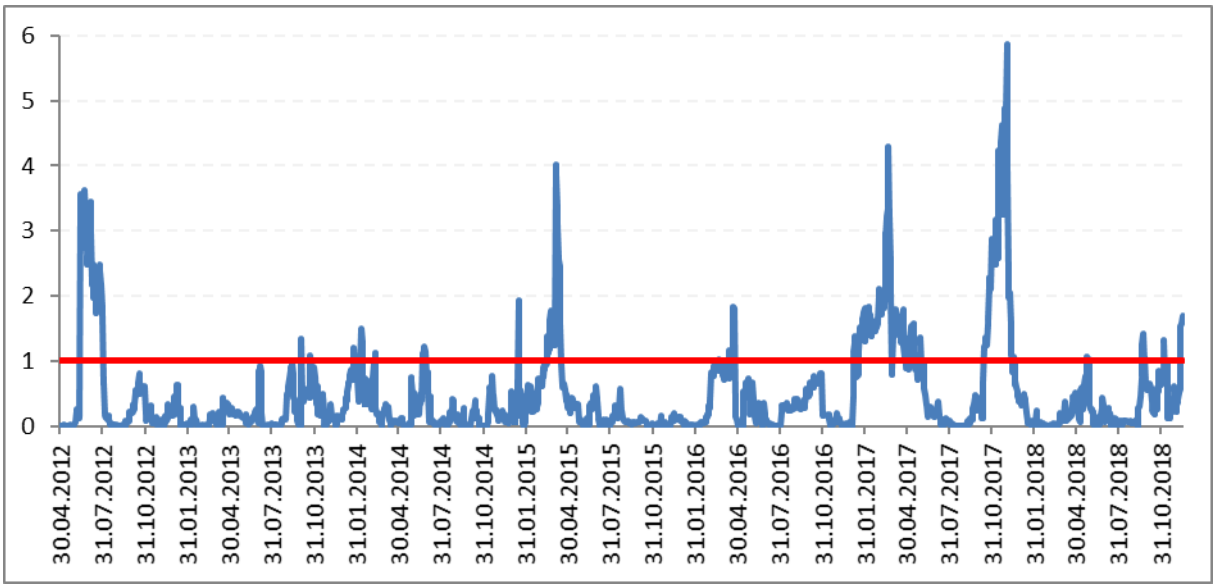


According to Chart 10, there is a causal relationship between the return of Bitcoin and the return of the Usd in limited periods. When it is analyzed by the terms, causality relationship is seen in June - July 2012, April-May 2013, June 2013, July 2015, November-December 2015, April-May 2016, September-December 2017, January-February 2018, March 2018 and July 2018. The causality relationship which is seen in the second half of 2017 when Bitcoin prices increased rapidly and in

the first half of 2018 when Bitcoin falls off rapidly show that Bitcoin and Usd are beginning to substitute investment tools to each other in Turkey case.

The results of the LBHC causality test from the return of BITCOIN to the return of the EURO are given in Chart 11.

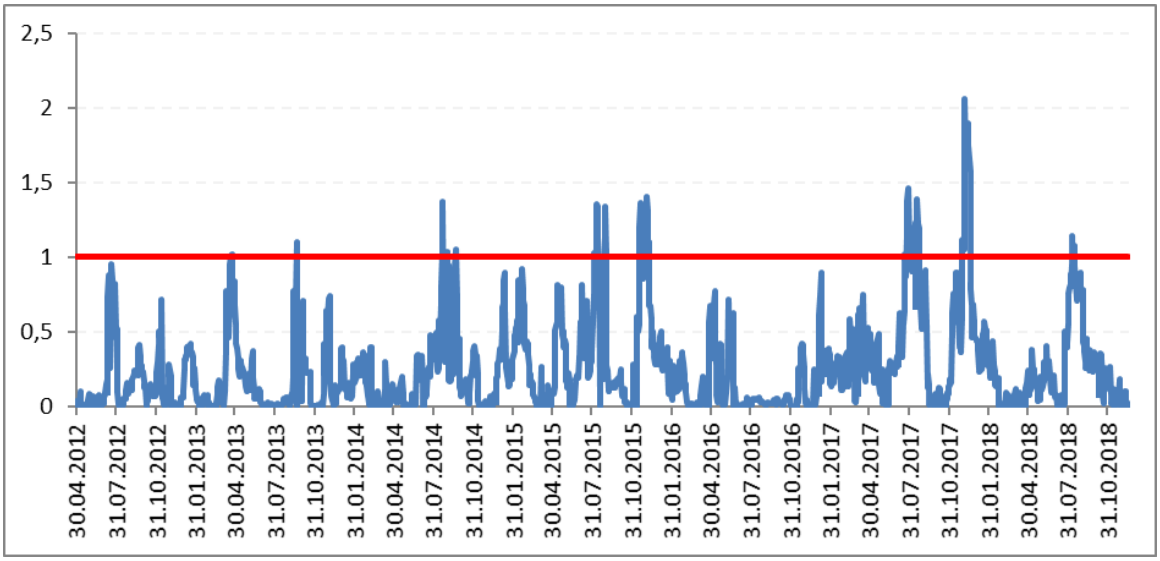
Chart 11: Causality Relationship from Bitcoin to the Euro



According to the results of Graph 11, the causality relation between the return of Bitcoin and the return of the Euro is similar to the causality relationship between the return of Bitcoin and the return of the Dollar. Chart 10 shows that the causality relation between Bitcoin and Euro is seen in June-July 2012, February 2014, June 2014, March-April 2015, April 2016, January-June 2017, October-December 2017, September-December 2018. The causality relationship which is seen in the second half of 2017 when Bitcoin prices increased rapidly shows that Bitcoin and Euro like Usd are beginning to substitute investment tools to each other in Turkey case.

The results of the LBHC causality test from the return of Bitcoin to the return of Bonds are given in Chart 12.

Chart 12: Causality Relationship From Bitcoin to the Bond



According to Chart 12, there is a relatively less causality relationship between the Bitcoin and Bond. In this case, it can be said that Bitcoin is not a substitute for the bond. In terms of sub-periods, there is a causal relationship from Bitcoin towards

to Bond in August 2014, August 2015, November-December 2015, July-August 2017, December 2017 and August 2018. The remarkable point in this analysis is that the causality relationship from Bitcoin towards Bond in the period when Bitcoin and Usd prices are intensively increasing. In other words, when investors decide between Bonds and Bitcoin, they took into consideration the Usd prices as well as Bitcoin prices.

3. CONCLUSION AND RECOMMENDATIONS

In this study, in Turkey interactions among the crypto-currencies (Bitcoin), stocks (Bist 100), foreign exchange, bonds and gold has been analyzed during the 02.02.2012-17.12.2018 period by using time-varying analysis. In the study, the stationarity of the series was examined through KSS method developed by Kapetanios, Shin and Snell (2003) with time-varying nonlinear unit root test.

In this test, Bitcoin's return series was stationary in the first months of 2013 but was not stationary in the following periods. This is important because it shows that Bitcoin prices have not yet stabilized worldwide and still contain significant fluctuations. The continuity and stability of the financial instrument is crucial for investors to trust a financial instrument. Therefore, it will be exceedingly useful both national and international regulatory and supervisory agencies are engaged and to place the BITCOIN market on a legal and stable environment. In the KSS unit root test conducted for the return of BIST100, it is observed that BIST 100 returns were found to be stable in the middle of 2016 but not stable in the following periods. This shows that Turkey's stock exchange has a quite fluctuating structure. This result keeps investors away from the stock market and limits increase of financial markets in terms of depth and diversity in Turkey. Therefore, Borsa İstanbul, publicly traded companies (listed companies) and regulatory authorities should give particular importance to ensuring stability in Borsa Istanbul. One of the most important reasons for this volatility is the share of foreign investors in Borsa Istanbul up to 74%. Foreign investors operating in Borsa Istanbul can quickly leave the stock exchange or move their assets to Borsa İstanbul in response to domestic or international changes and developments. This causes significant fluctuations in the returns of stocks traded in Borsa Istanbul. At this point it may be useful to install a Tobin Tax type braking system.

The return of gold series was observed as stable in March 2013 but not in other periods. This finding shows that Gold prices have a highly volatile nature in Turkey. However, gold is considered the most stable investment tool by Turkish society. The reason for this volatility in gold returns is that the price of gold in countries like Turkey is both affected by the increase in USD currency rate and the rise in world gold prices. Especially in the period when economic and political risks increase in the country, the demand for Gold in Turkish society is increasing, which in turn causes fluctuations in the yield of Gold. Chart 3 shows significant fluctuations in gold returns during the period of the coup attempt dated July 15, 2016, in the referendum period of 16 April 2017 and in the period of August 14, 2018 when the dollar tested the upper limit of 7 TL. The management of Istanbul Gold Exchange which was established on July 26, 1995 (Borsa İstanbul, 2018) in order to ensure stability in gold prices and to bring the gold held by the household as under-the-mattress savings to the economy has an important key role for this purpose.

The USD returns showed an abnormal fluctuation in August 2018, when the Dollar tested above 7 TL. Afterward, it was stable for a short-term but during the next periods, it continued to fluctuate. Based on this result, it can be said that USD currency and its demand has a volatile structure in Turkey. Turkey is one of the countries with high USD demand stemming from some reasons such as performing a large part of foreign trade volume via the USD currency, the vast majority of external debt is based on USD currency, and dollarization activities which is triggered by economic actor's confidence feelings related to USD currency. Rest on this observation, it is useful to take the necessary measures in this field and try to make the USD rate more stable. It may be stated that the CB of Turkey successfully managed the Dollar crisis in August 2018. However, it is beneficial for managers to continue to be sensitive about this issue. One of the most important factors lie behind on this instability of Usd currency rate is the since May 2013, a gradual decrease of the expansionary monetary policies implemented by the US Federal Reserve (FED) after the 2008 global economic crisis. And since October 2014, the Fed has been applying tightening monetary policy and it has been increasing interest rate levels gradually.

The return of the Euro is more stable than the Dollar. In the third quarter of 2013, in the first quarter of 2015 and in the third quarter of 2016, the return of the Euro was stable. Starting from this chart, for investors in Turkey instead of investment in USD currency it can be stated that preferring Euro investment may be more logical and reasonable. It may also be useful for economic administration to convert reserve assets and foreign debts of the country into Euro instead of Usd. Similarly, private companies may also convert their Usd debt to Euro through the swap transactions. The results of the KSS unit root test for TAHVIL series are given in Chart 6.

The yields of government bonds in Turkey in mid-2013 became partly stationary (stable), it has fluctuated in general. Therefore, the demand of individual investors, firms and foreign investors to Turkish Government Bonds is adversely affected. It is very useful for policy makers to take measures to ensure financial stability in the country.

In the study, the existence of causality relations between the series was examined through LBGC time-varying nonlinear causality test developed by Li et al (2016). As a result of causality relationship test, it id observed that there is a significant causal relationship from Bitcoin's return to Borsa İstanbul's return. This shows that Bitcoin is becoming an alternative (substitute) investment tool for domestic and foreign investors compared to Borsa Istanbul. It is time to mention that both Borsa İstanbul management and macro economy policymakers should take the Crypto Coins more seriously and prepare a legal basis for it.

There is a causality relationship from the return of Bitcoin to the return of Gold in June-July 2012, April-July 2013, October-November 2013, January-February 2014, December 2015-January 2016 and April 2017. What is interesting here is that in 2017 when Bitcoin prices increased by 19 times, there was no causality relation between Bitcoin and the gold. This shows that Bitcoin is preferred by investors who prefer to take more risks, while gold is preferred by investors who want robust and stable investment instruments. Causality from Bitcoin towards to Gold was observed in less frequency than from Bitcoin to Bist 100 during the analysis period. This situation shows that Bitcoin has more substitute relationship with Bist 100 when compared to Gold.

There is a causal relationship between the return of Bitcoin and the return of the Usd in limited periods. When it is analyzed by the terms, causality relationship is seen in June - July 2012, April-May 2013, June 2013, July 2015, November-December 2015, April-May 2016, September-December 2017, January-February 2018, March 2018 and July 2018. The causality relationship which is seen in the second half of 2017 when Bitcoin prices increased rapidly and in the first half of 2018 when Bitcoin falls off rapidly show that Bitcoin and Usd are beginning to substitute investment tools to each other in Turkey case.

The causality relation between the return of Bitcoin and the return of the Euro is similar to the causality relationship between the return of Bitcoin and the return of the Dollar. Chart 10 shows that the causality relation between Bitcoin and Euro is seen in June-July 2012, February 2014, June 2014, March-April 2015, April 2016, January-June 2017, October-December 2017, September-December 2018. The causality relationship which is seen in the second half of 2017 when Bitcoin prices increased rapidly shows that Bitcoin and Euro like Usd are beginning to substitute investment tools to each other in Turkey case.

There is a relatively less causality relationship between the Bitcoin and Bond. In this case, it can be said that Bitcoin is not a substitute for the bond. In terms of sub-periods, there is a causal relationship from Bitcoin towards to Bond in August 2014, August 2015, November-December 2015, July-August 2017, December 2017 and August 2018. The remarkable point in this analysis is that the causality relationship from Bitcoin towards Bond in the period when Bitcoin and Usd prices are intensively increasing. In other words, when investors decide between Bonds and Bitcoin, they took into consideration the Usd prices as well as Bitcoin prices.

4. CONCLUSION

Based on the findings obtained in this study, it may be accepted that Bitcoin has been becoming an alternative investment/savings tool for the Turkey case. Therefore, it can be said that it is time for the economy administration and banks to prepare the necessary legal framework in this field. In order for the crypto coins to become widespread and to stabilize, their validity / recognition in official and private transactions should be increased. It should be noted that Bitcoin has a great potential to prevent of tax evasion, to terminate the informal economy and eliminate intermediation costs. In this subject, Turkey as a country can take a benefit from the experience of Japan and China.

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THE REQUIREMENTS FOR ENTITLEMENT TO UNEMPLOYMENT BENEFIT

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ABSTRACT

Purpose - Turkish lawmaker adopted unemployment insurance with Law numbered 4447 in 1999. This study aims to scrutinize the conditions for benefitting from unemployment insurance, with the focus on the unemployment insurance payment. By studying on this, we want to bring some clarity to the practitioners.
Methodology – The conditions for benefiting from unemployment insurance payment will be examined in the light of Court of Cassation's judgment and practice of Turkish Employment Agency in a comparative law approach. With this regard, we will refer to German Law which has a solid system of unemployment insurance.
Findings – Unemployment benefit is granted only to unemployed insured whose employment contract is terminated on certain grounds and who has sufficient premiums. The requirements to be met for benefiting unemployment insurance are harsh, therefore they exclude majority of the unemployed persons.
Conclusion- Although the scope of unemployment insurance has been extended recently, unemployment insurance alone is not sufficient to combat unemployment.

Keywords: Unemployment insurance, unemployment insurance fund, unemployment benefit, employee, employer.
JEL Codes: K31, K41, J41

1. INTRODUCTION

Unemployment is one of the social risks listed in the ILO Convention No. 102, which was adopted in 1952 and set minimum norms on social security. Although the number of countries adopting compulsory unemployment insurance in their social security systems increased with the Convention No. 102, these developments took place at a relatively late date in our country (Güzel/Okur/Caniklioğlu, 2016: 669). For our country, the Convention has been in force since 1975, certain reservations to the provisions regarding unemployment were made though. Although this negative approach for unemployment insurance continued for many years, the Unemployment Insurance Law No. 4447 was entered into force on 25.08.1999. Unemployment insurance benefits provided for in the Law No. 4447 are unemployment benefits, vocational training and assistance for finding job, social insurance premiums paid by Turkish Employment Agency ("İŞKUR"). Since Law No. 4447 envisages an employer-employee-state funded compulsory unemployment insurance; in other words, the system is based on social insurance technique; there is no social assistance as a result of a non-contributory system. Unlike in other European countries, our social security system does not provide any unemployment benefits that could be qualified as a social assistance. In Germany as an example of an advanced social security system, both unemployment benefit named "Arbeitslosengeld I (Alg I)" and unemployment assistance named "Arbeitslosengeld II (Alg II)" or commonly known as "Hartz IV" are regulated clearly with law.

In our social security system where there is no unemployment benefit in the nature of unemployment assistance, income assurance is provided to unemployed persons by unemployment benefit as a requirement of social state. In this context, unemployment benefit is of particular importance among the other unemployment insurance benefits. Because the unemployment benefit is the most important tool in terms of ensuring a group, expressed in millions in our country, can

live a decent life. Turkish Statistical Institute ("TÜİK"), recently announced the unemployment rate at 11.1% on 15.11.2018 and has reported that this rate corresponds to 3 million 670 thousand people (TÜİK Newsletter, No. 27690). It should be noted that this ratio is quite high compared to European countries. For example, according to the latest data from the Federal Statistical Office of Germany, the unemployment rate in the country is only 4.9% (https://www.destatis.de/DE/ZahlenFakten/Indikatoren/Konjunkturindikatoren/Arbeitsmarkt/arb210.html). In our country, it is very important to determine the requirements for benefitting from unemployment benefit since there is no unemployment benefit within the concept of social assistance and the number of the persons constituting the interest group, in other words *unemployed* is very high. We have dedicated our work to the requirements of entitlement to unemployment benefit due to this importance.

In our country, the requirements for benefitting from unemployment benefits could be considered severe. The requirements for entitlement to unemployment benefit will be explained in detail below, but statistical information can demonstrate the level of severity. All the payments, including unemployment benefit provided for by Law No. 4447, are made from Unemployment Insurance Fund. As of October 2018, the Fund's revenue was over TL 125 billion and the total payment made up to now is just over TL 22 billion. Currently, the number of people benefiting from unemployment insurance payments is 476.097 (İŞKUR Unemployment Insurance Fund Newsletter, October 2018). Considering the above-mentioned unemployment rate and the corresponding number of people, it is clear that the rate of entitlement to unemployment benefit is low. In order to support this striking finding, in the "100-Day Action Programme" announced on 03.08.2018 by the Presidency, it is clearly stated that the requirements for the entitlement to insurance benefit will be stretched. In this context, stretching the requirement of certain length of working period and the premium, which will be explained in detail below, are on the agenda (See. http://www.hurriyet.com.tr/ekonomi/issizlik-maasina-yeni-duzenleme-40934573, https://www.haberturk.com/son-dakika-haberler-issizlik-maasi-kosullari-esnetiliyor-issizlik-maasi-nasil-alinir-2242438-ekonomi).

In this study we aim to scrutinize the requirements for entitlement to unemployment benefit. We will focus on the scope of persons considered "insured" first. Then we would like to define "unemployed" person within the meaning of Law No. 4447. The grounds for termination of employment contract that may grant this benefit will also be examined thoroughly. Lastly, we will evaluate premium and application requirements.

2. BEING INSURED

Although the unemployment insurance in our country was regulated by Law No. 4447, the insured persons were determined by reference to the Social Insurance and General Health Insurance Law No. 5510. However, not all the insured persons listed in the Law No. 5510 are covered by unemployment insurance. In principle, only insured persons who work under employment contracts can benefit from unemployment insurance. Civil servants and other public officials cannot benefit from unemployment insurance, as well as apprentices and interns as those do not work with employment contracts. Apart from that, those who work independently on their own behalf and not subject to employment contracts are also not covered by the unemployment insurance scheme (Art. 46/ II of Law No. 4447 with reference to art. 4 of Law No. 5510). It is necessary to add that with the adoption of additional article 6 to the Law No. 4447 in 2017, a group of the independent employees were included in the "unemployment" insurance by associating them with the "Esnaf Ahilik Sandığı" (Tuncay/ Ekmekçi, 2017: 652-653).

In order to benefit from unemployment insurance, it is necessary and sufficient to have worked with the employment contract within the scope of Law No. 5510. The employment of the insured employee in the private or public sector, or whether they are subject to the Labour Law No. 4857, is not important in terms of benefiting from unemployment insurance.

The fact that the insured person is foreign does not prevent him/ her from benefiting from unemployment insurance. However, either foreigners or Turkish citizens sent to Turkey for the period not exceeding 3 months do no fall within the scope of unemployment insurance as long as they are insured in a foreign country and can document this. In spite of that, insured persons who are sent abroad by their employers are covered by unemployment insurance. However, these people can only get unemployment benefit if/ when they return to Turkey (Art. 48/ VIII of Law No. 4447).

The type of employment contract has no importance with respect to benefit from unemployment insurance. Insured persons may work under a definite or indefinite term employment contracts or they fall within the scope of unemployment insurance even if they work with full- time or part- time employment contracts (Caniklioğlu, 2011: 10). However, meeting the premium payment days required to benefit from unemployment benefit may be difficult for the insured persons working with part- time employment contracts. The lawmaker who does not disregard this issue, has accepted that those persons may opt for voluntary insurance for the days remaining in the month (Art. 50 of Law No. 5510); in this context, they may be insured for the periods of non-employment (Art. 46/ II of Law No. 4447). Similarly, those who are employed in commercial taxi and similar urban public transport vehicles and those who work under the part time employment contracts

in areas to be determined by the Ministry of Culture and Tourism for less than 10 days in a month, can pay unemployment premium if they wish (Art. 46/ II of Law No. 4447 with reference to the additional art. 6 of Law No. 5510).

The scope of the unemployment insurance includes the insured persons subject to the "pension funds" listed in the provisional article 20 of the Social Insurance Law No. 506 (Art. 46/ II of Law No. 4447). However, persons associated with such funds founded by banks, insurance and reinsurance companies, chambers of commerce, chambers of industry, stock exchanges can only be accepted within the scope of unemployment insurance as long as they work under employment contracts.

3. BEING UNEMPLOYED

The second requirement of entitlement to unemployment benefit is to be unemployed. In article 47/ I/ e unemployed insured is defined as "the person *who lost his/ her job* due the reasons stated in the relevant articles of this Law while working as insured under employment contract in a workplace within the scope of this Law and notified that he/ she is *ready to work* by applying to the Agency". Again, in order to specify the components to be used in the determination of the unemployment phenomenon, the same clause of the same article to which unemployment insurance is defined should be taken into consideration. "Will and the ability of work" is clearly stated herein. In addition, in article 51 of the Law regulating the requirements for qualifying unemployment benefit, the necessity of insured to make a registration regarding that he/ she is ready to work by applying to İŞKUR is stated. Based on these regulations, it is useful to examine the phenomenon of unemployment in the context of three components. These are; *not to work*, but to *be willing and able to work.* As a matter of fact, in comparative law, unemployment is examined in the context of these three elements. In Sozialgesetzbuch (SGB) III § 138 in German Law, there are three conditions for unemployment. The first of these is not to be in a working relationship which could be briefly defined as *non-working* (Beschäftigungslosigkeit), the second one is to make effort to end the state of unemployment that we can describe as *being willing to work* (Eigenbemühungen) and third one is to be available for the job replacement service of Federal Employment Agency briefly defined as *availability* (Verfügbarkeit). In terms of our legislation, although the conditions for the phenomenon of unemployment are not listed systematically unlike German Law (see SGB III § 138), according to the above-mentioned regulations, in order to establish *unemployment* phenomenon which, entitles unemployment benefit, non-working and yet being willing and available of work requirements should be valid for our law, too. Therefore, in this study, unemployment phenomenon which is one of the requirements for the entitlement of unemployment benefit will be examined within the context of following components: absence of working relationship, willingness to work and availability to work.

3.1. Absence of Working Relationship

First of all, the classic and most general appearance of the absence of working relationship constitutes the end of the employment contract. In this context, it will be explained below which of the types of termination of employment contract will be entitled to unemployment benefit. However, it should be examined here whether the wording of *"losing job while working"* in the definition of unemployed insured in Law No. 4447 exclude all kinds of work time-wise. It should be noted that even if the daily or weekly working time is too short, it is not possible to accept that the non-working condition has been met, therefore unemployment phenomenon cannot be established. Again, in article 52/ I / b of Law No. 4447 as a support abovementioned conclusion- it is stated that if the unemployed insured receiving unemployment benefit works in an income-generating job; unemployment benefit would be interrupted. However, in comparative law, there are examples where this condition is more flexible. For example, in SGB III § 138/3, it is clearly defined that employees who work under 15 hours weekly can be entitled to Alg I as unemployment benefit under German Law. At this point, we would like to emphasize that there is no difference between working dependently or independently (Baldschun, 2018: SGB III § 138 Rn. 67; Koch, 2017: § 23 Arbeitslosengeld I Rn. 6; for a different approach see Hekimler, 2008: 541).

A special problem needs to be considered in the absence of a working relationship is the case when the employment contract is suspended. Article 51 of Law No. 4447 lists the suspension situations as strike, lockout or duties arising from law as to prevent the entitlement to unemployment benefit. The suspension of employment contract results in suspending the main obligations of employer and employee, *namely work and wage*, while the employment contract itself and the other obligations arising from it remain (Süzek, 2018: 492). It is not possible for us to adopt an inclusionary approach in terms of the question of whether all suspension cases will entitle the unemployment benefit. The fact that the law maker has only included the cases of suspensions related to strikes, lockouts or duties arising from law and the wording of the article in question itself support this. In the event of a suspension, whether the insured could be regarded as unemployed should be assessed separately within the context of each condition for unemployment. It can be said that the insured does not have a working relationship in cases of the strikes, lockouts or duties arising from law that result the suspension of the employment contract (For similar evaluations in German Law, see Brand, 2018: SGB III § 138 Rn. 18). Undoubtedly, the most important indicator of the existence of a working relationship is the existence of personal dependence and the authority of the employer. Such a situation cannot be observed in cases of the strike, lockout or the duties arising from law.

At this point, whether the continuation of the employment relationship affects the existence of the working relationship should be examined. In the context of the absence of a working relationship, which is a condition of unemployment, the working relationship has a meaning under the law of performance (Leistungsrecht) in German Law. Unemployment benefits can be granted if only there is no employment within the meaning of performance law (BSG, Urteil vom 13.7.2006, *in* NZA-RR, 2007: 384). In this sense, even if there is an employment relationship, it could be said that the working relationship is interrupted or terminated (BSG, Urteil vom 9. 9. 1993, *in* NZS, 1994: 142). Therefore, the condition regarding the absence of a working relationship must, as a rule, be assessed independently of the existence of an employment relationship. What is important is that the employee does not really work and does not get paid (Koch, 2017: § 23 Arbeitslosengeld I Rn. 6). If the insured no longer works, there is no working relationship in the sense of performance law unless a new working relationship is realized, or the previous working relationship has not started again (Mutschler, 2017: SGB III § 138 Rn. 9). However, the insured cannot be regarded as available more specifically fit to work in the context of these situations creating suspension of employment contract. Therefore, the phenomenon of unemployment should be examined separately within the framework all conditions in each suspension case. We would like to state that the meaning imposed on the working relationship in German Law in the context of performance law must also be valid in Turkish Law. Therefore, as long as there are other conditions sought for unemployment, the fact that the employment contract has been suspended is not an obstacle for unemployment. For example, it should be accepted that there is no working relationship in the sense of performance law in the presence of contractual suspension due to compulsory reasons which lasts more than one week, the period of free leave of the employee or seasonal employment contract (Regarding being entitled to unemployment benefit only via a new regulation, see Başterzi, 1996: 132; Bal Bektaş, 2016: 162-163). Thus, it cannot be propounded that the existence of employment relationship in these cases where the condition of availability is not damaged, eliminates the requirement of absence of working.

Another concept that needs to be considered in terms of the requirement of absence of working relationship is voluntary work. It is not possible to accept that the activities that are carried for an ideal purpose, rather than making a gain such as voluntary work, can be considered as obstacles to benefiting from unemployment benefit, and it is not possible to evaluate an activity which is only carried out as a hobby within the scope of working relationship (Baldschun, 2018: SGB III § 138 Rn. 27; Doğan Yenisey/Kabakcı, 2017: 107).

The avoidance of acceptance of the employee's work by the employer should also be examined in the context of the existence of a working relationship. As a rule, the employer's avoidance of accepting the work of the employee results in the default of the employer. According to article 408 of Turkish Code of Obligation, where the employer is at fault in preventing performance of the work or fails to accept its performance for other reasons, he remains obliged to pay the wage, but the employee is not obliged to make up the time thus lost. Since avoiding acceptance of the work requires employer to pay the wage as a result of default, it is not possible to accept unemployment here, unlike the suspension of employment contracts. However, if the employee chooses to terminate the employment contract due to the default of the employer, the unemployment requirement is accepted to be realized here (Bal Bektaş, 2016: 139).

3.2. Willingness and Competence to Work

Apart from the absence of a working relationship, the insured should be willing and able to work in order to establish the unemployment requirement. First of all, unemployment requires the employee to be in a position to end this situation. In German Law, receiving job replacement service by the Employment Agency alone is not considered sufficient in order for the insured to be willing to work, it is required for the unemployed to make efforts regarding job seeking. Failure by the insured person to fulfil this obligation results in the loss of unemployment benefit, which does not automatically terminate the right to benefit, only prevents the unemployed receive unemployment benefit unless he/ she makes such an effort (Mutschler, 2017: SGB III § 138 Rn. 15). Under Turkish Law, it has been clearly stated that the insured unemployed must apply to İŞKUR and make a registration that he/ she is ready to take a new job. However, the fact that the unemployed insured cannot prove that he/ she has fulfilled the obligation to seek job other than the mediation of İŞKUR does not result in the termination of the benefit. Yet, it would be very appropriate for the purpose of the Law No. 4447 to impose an obligation on insured to make an effort to end the unemployment and to authorise İŞKUR to have a control over this by law.

In order to end unemployment, the unemployed insured should be available to the job replacement of İŞKUR while getting the job replacement service of İŞKUR. In German Law, availability has two aspects: subjective availability and objective availability. Subjective availability means that the unemployed is ready to work (Arbeitsbereitschaft); objective availability means that the unemployed is able to work (Arbeitsfähigkeit) (Koch, 2017: § 23 Arbeitslosengeld I Rn. 10). In the absence or termination of these, it is not possible to accept unemployment.

The will of the unemployed insured's readiness to work appears first in the declaration made to İŞKUR. Insured cannot restrict the declaration to be made to İŞKUR, as a matter of fact that the insured is available subjectively to the job replacement service. The fact that the insured is ready to work under certain employment types, perform certain jobs or

professions are the limitations incompatible with subjective availability. Again, being ready to work cannot be conditional. The expectations of the insured in respect of the work, which is merely a wish, shall not impair the condition of being ready to work. Therefore, it is not possible to talk about unemployment only if there are limitations and conditions that are incompatible with subjective availability (Steinmeyer, 2017: SGB III § 139 Rn. 124-126). However, in order to be ready to work, this should be accepted as being *ready to work in a suitable job* (BSG, Urteil vom 24.5.1984, in NZA, 1985: 101). In article 52/1/a of Law No. 4447, it is stated that the unemployment benefit will be ceased in case of rejection of a job that is suitable for the profession, close to the wages and working conditions of the last work and within the boundaries of the municipal adjacent area of the residence without justified reason. Therefore, it cannot be stated that the condition of being ready for work has disappeared in terms of the İŞKUR's job replacement that is not a suitable job and the phenomenon of unemployment continues. In terms of the regulation, it is debatable on how the proximity of wage and other working conditions should be concretized. In German Law, some rates are determined by taking into consideration the duration of unemployment of the insured person in the special provision related to wage. According to this, in the first three months of unemployment, a reduction of more than 20% of the gainable wage and a reduction of more than 30% for the following three months cannot be considered suitable. From the seventh month of unemployment, a wage which is lower than the unemployment benefit is considered to be inappropriate (SGB III § 140). We think that it may be appropriate to take into account 20% or 30% in general, although it may not be appropriate to determine the rates varying according to the unemployment period since the periods of unemployment allowance are lower than those of German Law.

It should also be examined whether being over a certain age, in the context of the subjective availability condition, is effective in qualifying the insured as unemployed. In order to be entitled to unemployment benefit in our law, it is not possible to mention a general rule about age. However, at this point it can be mentioned that there is an indirect rule in terms of the insured persons who are entitled to pension.

There are some situations in which the insured cannot be regarded as able to work, remove the objective availability and hence there is no longer unemployment phenomenon. The fact that the insured is no longer able to work for any job, eliminates objective availability (Steinmeyer, 2017: SGB III § 139 Rn. 80). While the types of appearance may be diverse, it is evident that, as we have already mentioned above, suspension of employment contracts arising from strikes, lockouts or the duties arising from the law eliminate the ability to work of the insured. Because Law Trade Unions and Collective Labour Agreements No. 6356 prohibits employees whose employment contracts are suspended due to a legal strike and lockout to work for another employer and otherwise employer contracts could be terminated by employers on just cause (Başterzi, 1996: 132). Again, in the case of a manoeuvre apart from the military duty or any mobilisation or any work duty arising from law, insured is not able to work for any other work by the nature of abovementioned situations. There has to be a meaning that the law maker only stated the suspension of employment contracts resulting from strike, lockout, duties arising from law in the relevant provision. Since the law maker has accepted an exception provision in the relevant regulation, its narrow interpretation is more appropriate than extending it to all suspension cases. Therefore, this provision is only comparatively applicable in terms of other suspension conditions which eliminate the condition of objective availability necessary for the establishment of unemployment phenomenon. For example, in case of employee's detention or arrest, it cannot be said that the employee could be employed during the period of detention or arrest. Again, for the period in which the insured is prohibited to work due to pregnancy, the conclusion is the same. Furthermore, in cases where the illness or disability of the insured constitutes an obstacle to the fulfilment of any the work that can be offered within the scope of the job which is suitable for the insured, the availability is eliminated (Steinmeyer, 2017: SGB III § 139 Rn. 81; For the opinion that the insured one is not able to work due to illness, maternity, military service and civil service and thus cannot be regarded as unemployed, see Bal Bektaş, 2016: 162). Otherwise, the suspension of the employment contract should not constitute an obstacle in terms of entitlement to unemployment benefit. At this point, we would like to note that the assessment in question is of a conceptual nature; we do not miss out that some of the insurance benefits made due to the appearance of certain suspension cases (i.e. benefit for temporary incapacity), eliminate unemployment benefit wholly or partially. Finally, apart from the suspension of employment contracts, in cases where the work and residence permit of foreign insured ends, unemployment phenomenon cannot exist due to the fact that there is no objective availability.

4. TERMINATION OF EMPLOYMENT CONTRACTS BASED ON CERTAIN GROUNDS

In order to be entitled to unemployment benefit under Law No. 4447, termination of employment contracts must be based on certain grounds. In the article 51 of the Law, these grounds are listed according to the numerus clausus principle. The main point here is that the insured person must not be culpable for the termination of employment contract (Sözer, 2017: 530). The first ground for the termination that entitles the unemployment benefit is the termination of the employment contracts by the employer with notice of termination. Termination of employment contracts by the employer immediately without giving any prior notice provided the wage corresponds to the notice period is paid in advance also entitles the unemployment benefit (Tuncay/ Ekmekçi, 2017: 662- 663; Saraç, 2012: 13; Bal Bektaş, 2016: 140). It should be noted that

the fact that employers terminate the contracts immediately without giving notice or without a just cause- in case of irregular termination- also entitles unemployment benefit (Tuncay/ Ekmekçi, 2017: 663; Bal Bektaş, 2016: 140).

The termination of employment contracts for the just causes that cannot be attributed to the employee entitles to unemployment benefit, too. In fact, in article 51 of the Law, termination of employment contracts of the insured who are subject to Labour Law according to article 17/ I and III entitles the unemployment benefit and such provisions correspond to article 25/ I and III of Labour Law No. 4857. One question that may arise is whether the insured will be entitled to unemployment benefit in the immediate termination of the employment contracts within the scope of article 25/ IV of Labour Law No. 4857 due to the detention or arrest of the employee. As it is known, this ground was not explicitly and separately regulated under article 17 of the abolished Labour Law No. 1475; it was regulated with subclause IV added in article 25 of Labour Law No. 4857. Since during the Labour Law No. 1475 terminations based on this ground was made according to article 17 of the same Law, the fact that this ground is regulated as a separate sub-clause in the Labour Law No. 4857 should not have a negative effect in terms of entitlement to unemployment benefit; we believe that the termination by the employer within the scope of Article 25/ IV of article 25 of the Labour Law No. 4857 shall also entitle the unemployment benefit (also see Tuncay/ Ekmekçi, 2017: 663). However, it should be noted that as long as the detention or custody continues, it is not possible for the insured to seek a job (see below for the explanation of *availability*). Therefore, unemployment benefit in case of termination within the scope of article 25/ IV of Labour Law is only provided after the detention/ custody end.

The termination of employment contracts by insured persons without just causes is a form of termination that does not entitle unemployment benefits. Similarly, termination of employment contracts by the mutual agreement of the employer and the insured person does not entitle insurance benefit. Because, in such cases unemployment is regarded voluntary (Bal Bektaş, 2016: 143-145). However, in German Law, both the employee's termination of employment contract without a significant reason in the sense of SGB III § 159, and the termination of employment contracts by mutual agreement do not prevent the entitlement to unemployment benefit; but the unemployed insured cannot benefit from it for the period of 12 weeks (Koch, 2018, Sperrzeit).

The automatic termination of employment contracts for definite term by the expiration of the term agreed is listed in article 51 of Law No. 4447 as to entitle insurance benefit. One problem that may be addressed here is whether or not the insured persons who have objected to the transfer of their employment contracts to the acquirer due to merger, split and type change of trade companies will be entitled to unemployment benefit. Article 178 of the Turkish Commercial Code No. 6102 includes the provision *"if the employee objects, the employment contract is terminated at the end of the legal period of dismissal"*. Wording of the provision is convenient to make a deduction that the employment contracts terminate automatically in case of objection. Whereas there is no such provision in Law No. 4447 which entitles all the automatic terminations of employment contracts to insurance benefit. Only the expiration of the definite term contracts is accepted in this context. A scholar from Turkish Labour Law doctrine states that it is possible for the insured persons to be entitled to unemployment benefit by regarding the termination provided in article 178 of TCC as a dismissal by employer since the term *"legal period of dismissal"* evokes (Özkaraca, 2012: 140). We find this opinion rational.

It is stated in Turkish Labour Law doctrine that the insured persons cannot benefit from the unemployment insurance payment in case of unjust termination of definite term employment contracts before expiration date by employers since in this case they have right to demand the wage for the remaining term (see Bal Bektaş, 2016: 159). In our opinion, the insured persons should be entitled to unemployment benefit in this case, too. In fact, in this case insured persons may only demand the *compensation* amounted to the wage for the remaining term not the wage itself. This should not be considered as a restraint on the insurance benefit.

The termination of employment contracts within the scope of article 21 of the Privatization Law No. 4046 also entitles unemployment benefit (Art. 51 of Law No. 4447). The provision in question entitles job loss compensation to the workers whose employment contracts are terminated due to privatization. In fact, privatization practices do not terminate the employment contracts of the employees who work in institutions included in the scope of privatization itself, require the employer to terminate the contracts by giving notice. It is obvious that the insured persons whose employment contracts are terminated by their employer by giving notice are entitled the insurance payment (Art. 51 of Law No. 4447. Also see Güzel/ Okur/ Caniklioğlu, 2016: 686). However, law maker chose to cease any hesitation by regulating this issue separately (Bal Bektaş, 2016: 161). Because in article 46 of Law No. 4447, those who received job loss compensation were excluded from unemployment insurance. However, the conditions for entitlement to job loss compensation are more severe than the conditions for entitlement to unemployment benefit; and the period of compensation is shorter than the period of unemployment benefit. The law maker who has taken in consideration this situation, has accepted the provisional article 1 of Law No. 4447 in spite of article 46 of Law No. 4447 in order to prevent the persons who received the job loss compensation to be in a more unfavourable position comparing the case they did not qualify for this compensation. According to the provisional article 1, insured persons who are entitled to work loss compensation and unemployment

benefit at the same time cannot demand both payments. Job loss compensation must be paid primarily. However, it is also explicitly stated that the unemployment benefit will be paid but job loss compensation will be deducted from it, as long as the insured persons receiving job loss compensation cannot find a job during this period.

5. HAVING WORKED FOR A CERTAIN PERIOD AND MET PREMIUM REQUIREMENTS

As we have mentioned at the beginning, the severity of the conditions of entitlement to unemployment benefit in our current system is mainly due to the working and premium payment conditions for a certain period of time. Because in article 50 of Law no. 4447, insured unemployed are only entitled to unemployment benefit if they have been insured for 600 days in the last three years before the termination of the employment contract and they have paid unemployment insurance premium for this period and also, they have worked continuously for the last 120 days before the termination of the employment contract. In doctrine, it is stated that 3 separate conditions have to be met according to the relevant provision; first, the insured must have at least three years of insurance period to be entitled to the benefit; secondly, a premium of at least 600 days must be paid within this three-year period and lastly these 600 days premium must have been paid by having worked continuously for the last 120 days before the termination of the employment contract (Sözer, 2017: 527). We cannot conclude that the insured must have at least three years of insurance period in order to entitlement to unemployment benefit. The three-year period only refers to the period during which 600 days the unemployment insurance premium must have been paid. In terms of the condition of having worked continuously for the last 120 days, this must be accepted as the most important regulation that makes it difficult for the unemployed to be entitled to unemployment benefit (Özkaraca, 2002: 94). However, this condition has been facilitated with the Communiqué No. 3 on the Implementation of the Unemployment Insurance Law. According to article 2 of the Communiqué in question, "although the service contract is continuing; in cases of disease, free leave, disciplinary action, detention, custody which does not result in conviction, partial employment and interruption of work due to strike, lockout, events affecting general life, economic crisis, natural disasters in the last 120 days prior to the termination of the employment contract, the Social Security Institution records shall be taken as basis for the periods where the premium is not paid and such periods do not constitute an interruption when calculating 120 days. Again, in order to determine the entitlement, it is necessary to take reemployment lawsuit within the scope of article 20 ff. of Labour Law No. 4857 into account. According to article 50/ III of Law No. 4447, entitlement to unemployment benefit is determined based on the last day of the premiums paid due to the reemployment lawsuit and unemployment benefit is only provided for the time spent unemployed.

The existence of a condition similar to that in our country within the European Union member states is only available in Portugal (to have worked 600 days in the last two years) and Italy (to have worked 52 weeks in the last two years) (Limoncuoğlu, 2012: 385). In order to entitle Alg I, German Law requires insured to have worked for at least 12 months in the last two years- called "Anwartschaftszeit" (SGB III § 142).

In practice, the most important problem in terms of the aforementioned condition is the fact that employers declare insured work period less than the actual period and do not make the premium payment. While the correction of this situation is possible through an action for fixing of period of service; taking into account the length of the trial periods in our country, it is not possible to achieve the purpose expected from unemployment insurance in this way (Bal Bektaş, 2016: 180).

6. APPLICATION TO TURKISH EMPLOYMENT AGENCY

In case of the termination of employment contracts that entitles the unemployment benefit, employers are obliged to issue three copies of dismissal notice and send one of the copies to İŞKUR, hand one of the copies to the insured persons, keep one of the copies in the workplace within the 15 day-period (Art. 48/ IV of Law No. 4447). However, in additional article 1 of Law No. 4447, it is stated that the notifications made to Social Security Institution regarding the ending of the insurance coverage are substituted for the ones to be made to İŞKUR. Therefore, employers do not need to notify also İŞKUR. Within the scope of Law No. 5510 termination of employment contracts end the insurance relation and Social Security Institution must be notified about it no later than 10 days.

Insured persons who are unemployed and wishing to benefit from unemployment insurance payment must apply in person to İŞKUR directly or electronically with the dismissal notice issued by the employer within thirty days from the day following the termination of the employment contract (Art. 48/ V, 51/ I of Law No. 4447). With this requirement, it is highly probable that insured persons may be deprived of their rights in cases where the dismissal notice is not issued, or the employers issue it contrary to facts. In order to eliminate this risk to some extent, article 5 of the Communiqué on the Implementation of the Unemployment Insurance Law No. 3 states that the application for the insured unemployed person with his/ her petition and official ID will be sufficient in case the dismissal notice is not issued. On the other hand, no provision has been made for the insured unemployed, who is not entitled to unemployment benefit due to the fact that the dismissal notice has been issued contrary to facts. As a solution to this problem it is suggested that insured persons still should apply to İŞKUR and after applying should file an annulment action against the İŞKUR's decision declining the unemployment benefit

(Sözer, 2017: 531). In our opinion, this approach is far from being a solution. Because the fact that the dismissal notice to be issued by employer is issued contrary to facts do not impair the İŞKUR's decision *per se*. In view of the current regulation, İŞKUR is bound by the ground for the termination stated in dismissal notice issued by the employer (Tuncay/ Ekmekçi, 2017: 666); thus, İŞKUR is not obliged to seek the real reason behind the termination of employment contracts. Current judgments of Court of Cassation are as follows: In a case against the employer either for reemployment or severance/ notice pay or the declaratory ruling as to determine the employment contract has been terminated on the grounds that entitle the insurance benefit, if the judge rules in favour of the insured unemployed, the insured may apply to İŞKUR for the retroactive insurance benefit, as long as the application to İŞKUR is made within the period of the payment to be made (See Court of Cassation, 9th Civil Chamber, 9.11.2005, 7211/ 35435; Court of Cassation, 22nd Civil Chamber, 23.1.2018, 20973/ 1142; Court of Cassation, 7th Civil Chamber, 5.3.2015, 3316/ 3301, www.kazanci.com. Court of Cassation, 9th Civil Chamber, 23.10.2007, 23578/ 31368, Bal Bektaş, 2016: 155). The interest to be processed from the date of the application to İŞKUR shall be requested from the employer within the context of general provisions (See Ekmekçi, 2011: 347. Also see Court of Cassation, 9th Civil Chamber, 23.10.2007, 23578/ 31368, Bal Bektaş, 2016: 155). Although this practice is intended to redress the unemployment benefit, which the insured unemployed has been deprived of, it is far from achieving the goal of unemployment insurance which is to eliminate the negative consequences of unemployment (Also see Başterzi, 1996: 153; Bal Bektaş, 2016: 158). Because unemployment benefit is a payment that aims to provide sufficient income guarantee to provide minimum needs of the unemployed persons until they find a job. However, in this scenario, the insured persons get this payment quite late and perhaps after they find a job. Furthermore, it is unclear whether the agreement document concluded by the employer and the employee within the framework of the obligatory mediation provisions in the labour disputes adopted with the Labour Courts Law no. 7036 will have an effect on the entitlement of insurance benefit. In our opinion, the issues contained in dismissal notice are non-mediatable, the parties' agreements in this respect do not bind İŞKUR. In terms of *de lege ferenda*, the Agency should make the unemployment insurance payment relying on the statement of insured unemployed who has applied for it. In case of unwarranted payment, the Agency should demand it from the insured person in question (For other solutions suggested see Başterzi, 1996: 154; Tuncay, 2012: 13; Limoncuoğlu, 2012: 93). In fact, the Communiqué No. 3 on the Implementation of the Unemployment Insurance Law provides this solution when the dismissal notice is not issued by the employer at all. However, it should be noted that it is not easy to adopt this solution in the view of the current regulation.

Application to the Agency should be made within 30 days. The beginning of the 30-day application period is determined as *the day following the termination of the employment contract* in article 48 of the Law No. 4447. However, the conditions entitling unemployment benefit are not limited to termination. For example, in cases where employment contracts for definite term terminate automatic with the expiration of the term, unemployment benefit is entitled. In our opinion, it would be more accurate to understand the expression of "*the date of the termination of the employment contract"* in article 48 as *"the date when the employment contract ends".* Also, the expression of "*the date when the employment contract ends"* require taking into account the date when the termination of the employer by giving notice or paying the wage corresponds to the notice in advance gets effective instead of the date of the declaration of termination (See Bal Bektaş, 2016: 191). However, in the event of irregular termination by the employer, the following day of the date of the declaration of the termination should be accepted as the beginning of the application. Regarding the insured persons who are not reemployed despite the ruling of annulment of the termination within the scope of article 21 of Labour Law No. 4857, the date of the termination of the employment contract must be accepted as the date of the employer's declining to reemployment and 30-day application period has to be calculated accordingly.

The thirty-day application period is not qualified as a period of prescription (Bal Bektaş, 2016: 190). Because it is clearly stated in the article 48 of the Law the delayed time in application - except the *force majeure*- will be deducted from the total period entitled to receive unemployment benefit (Also see Court of Cassation, 10th Civil Chamber, 6.2.2007, 19646/ 1658, www.kazanci.com). The cases which may be accepted as force majeure are listed as exemplary in article 5 of the abovementioned Communiqué. For example, custody or detention without being sentenced are considered as force majeure.

In article 51 of Law No. 4447 insured persons demanding insurance benefit are required to make the application to the Agency in person and to register that they are ready to receive a new job. The Court of Cassation gives a negative answer to the question of whether the application can be made through the representative, for example attorney. The Supreme Court states that unemployment insurance includes the purpose of improving employment, as well as preventing the loss of income of the unemployed; In order to achieve this purpose, unemployed persons have to apply directly to the Agency in order to provide the organic bond with the Agency (Court of Cassation, Assembly of Civil Chamber, 3.5.2006, 10- 242/ 270; Court of Cassation, 10th Civil Chamber, 20.06.2006, 7506/ 9287, www.kazanci.com). In the doctrine, it was stated that the purpose of the provision was to prevent the application by notary or via mail to the Agency (Ekmekçi, 2009: 292). As a matter of fact, it was further stated that it should be possible to apply through an attorney since the possibility of applying to the Agency in electronic environment was accepted in 2008 (Ekmekçi, 2011: 341).

7. CONCLUSION

Unemployment benefit is the most important tool in terms of providing the livelihood of 3 million 670 thousand people who are facing unemployment, which is one of the most important social risks especially in terms of our country. However, as stipulated in this study, the conditions of entitlement to this payment in our law are quite severe due to its nature. In our social security system, where the unemployment assistance is not regulated, it is necessary to at least facilitate the conditions of unemployment benefit and ensure that more unemployed persons benefit from it. When the savings in the Unemployment Insurance Fund is taken into consideration, the balance between gain and burden necessitates facilitating the conditions of unemployment benefit. In our opinion, it is necessary to adopt a wider approach, in particular in terms of addressing the definition of unemployment in a broader context and in the fact that unemployment is not specific to the termination of the employment contract, and even in terms of the types of termination of the employment contract. Again, the most important obstacle in terms of entitlement to unemployment benefit which is having worked for a certain period and premium requirements should be reconsidered.

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