

The Place Of Decree Laws In Tax Law

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ABSTRACT

Decrees issued by the Council of Ministers, based on an authorization given by the law of the legislature, have the force of law process. Laws can be changed by executive decrees. Even the abrogation of some of the provisions of the law by decrees can be possible.

The first sentence of the article of 91/1 of Turkish Constitution includes the following provision: “The Turkish Grand National Assembly may empower the Council of Ministers to issue decrees having the force of law”. Decrees, are excluded from the basis of the empowering law. The provision about empowering law is regulated in the second paragraph of the 91st article of Turkish Constitution: “The empowering law shall define the purpose, scope, principles, and operative period of the decree having the force of law, and whether more than one decree will be issued within the same period.”

The Council of Ministers has no authority to issue decrees on the taxes because the 73rd article of the Constitution is take part in the forth chapter of political rights and duties. Therefore, the usual period of the decrees is not a source of tax law.

The authority about taxation to Council of Ministers is set at the 4th (the last) paragraph of the article 73 of Turkish Constitution: “The Council of Ministers may be empowered to make amendments within the lower and upper limits prescribed by the law on provisions of exemptions, exceptions, reductions and rates related to taxes, duties, fees and other such financial obligations.”

In this study, this issue will be discussed. Can the authority granted to the Council of Ministers be used by executive decrees? Or, the limitations of the decrees about political rights and duties include the authority granted to Council of Ministers? This is the main problem of this study.

The Council of Ministers uses the authority by the decisions of the Council of Ministers. Whether the Council of Ministers can use its discretionary authority by decrees or not is discussed in the doctrine. The prohibited issue by the provision of the article 91/1 “and the political rights and duties listed in the Fourth Chapter, cannot be regulated by decrees,” relates to issues that should be regulated only by law. The Council of Ministers can use its authority about taxes by decrees (a higher hierarchical process type) instead of decisions of Council of Ministers (a lower hierarchical process type). Therefore, the authority granted to the Council of Ministers can be used by decrees although there are some problems.

(NOTE: In this study, “decrees” or “decree laws” means, “decrees having the force of law.” The other “decrees” issued by the Council of Ministers called as ‘decisions of the Council of Ministers’, in this study.)

Keywords: Tax Law; Decree Laws

1. INTRODUCTION

Decree law has an important and effective role in tax law. As the article on ‘Tax Duty’ is involved in ‘Political Rights and Duties’ of Turkish Constitution, it is accepted as a rule that no tax regulation can be conducted

using decrees (decrees having the force of law). In this respect, the regulations about the main elements of taxes are not possible to be conducted using decrees. However, this restriction is ruled out in case of states of emergency and no decrees made during this period will be authorized to conduct tax regulations.

Due to the fact that tax law is very much related to the personal liberty rights, it has no significance of legality in this field of law. The legal principle of taxes, which occurred as a result of hard struggle throughout history, refers that the one and only authorized organ is the legislation in the field of taxation. The principle of legality constitutes one of the main principles in Constitutional Law and accepted all over the world, also being a part of all of Turkish Constitutions since 1876 Constitution (excluding the one in 1921). According to this, all financial obligations such as taxes, tolls, fees and *such financial obligations* can only be determined, amended or abolished by law (Article 73/3 in the Constitution).

After the constitutional amendments made in 1971, the Cabinet is recognized with a limited authorization in terms of taxation in our judicial system. Following this regulation, the Cabinet is only authorized to make amendments in four of the main elements in taxation (exemption, exceptions, discounts and rates) within the scope as permitted by law.

This constitutes one of the main issues to discuss in this study. Is it possible to use this authority entitled to the Cabinet with decrees? Or, does the restriction related to making no amendments in political rights and duties using decree laws also involve this.

Decrees may be passed for such issues other than the main elements of taxation (the ones involving details and techniques). For instance, bringing all tax inspection units under one roof is enabled using a decree law. In this respect, the main problem to be underlined here is the one related to making amendments in the main elements of taxation using decrees.

2. DECREES (DECREEES HAVING THE FORCE OF LAW) IN GENERAL

Decrees (decrees having the force of law) are effective action on substantial level, passed by the Council of Ministers using the authorization entitled to them by the legislative organ. It is put into effect as a law on its organic meaning and shape after the approval of the Parliament (Ayan & Arslan, 2009, p. 36). Although it is an action taken by the Council of Ministers, it is regarded as a real law (having the force of law).

Using decrees, it is possible to make amendments in the legislation and even to abolish some provisions of law. In this view, decree laws precede to all regulatory actions of the administration on hierarchical level (Teziç, 1972, p. 8; Özbudun, 1986, p. 227; Hondu, 1988, p. 35). It is also accepted in the doctrine that decree laws are the part of Executive organ on an organic level (Tanör & Yüzbaşıoğlu, 2001, p. 365; Kuzu, 1983, p. 87; Sağlam, 1984, p. 266).

There have been radical amendments in the 1961 Constitution with the Law No 1488. Following this amendment made in 1971, the Council of Ministers is empowered to make decrees (having the force of law). However, it is also stated in the Constitution that tax duties will not be regulated using decrees (Duran, 1975, p. 3; Gözübüyük & Tutum, 1975, pp. 3, 6).

General terms on decree laws are mentioned in the 1982 Constitution in a similar way. The first sentence in Article 91/1 of the Constitution states “*The Turkish Grand National Assembly may empower the Council of Ministers to issue decrees having the force of law.*” Decrees are made basing upon an authorization. The authorization of making decrees can only be given to the Council of Ministers with an empowering act. Therefore, the empowering act of the Council of Ministers to make decrees in ordinary periods results directly not from the Constitution, but from this empowering act (Özbudun, 1993, p. 204). There are also regulations on this empowering act in the Article 91/2 of the Constitutional Law: “*The empowering act indicates the purpose, scope, principle, and using periods of decree laws and if it is possible to make more than one decree having the force of law within this period.*” In accordance with this provision described in the Constitution, empowering act will involve the purpose, scope, and principles, using periods of decree laws and if it is possible to make more than one decree law within this

period. The empowering act should cover all these elements mentioned herein. Moreover, such elements as “significance, urgency and obligation” are also added into these elements by the jurisprudence of the Constitution (Yıldırım, 1995, p. 75 vd.; Tanör & Yüzbaşıoğlu, 2001, p. 368; Also see. Constitutional Court, 1.2.1990 date and no. 1988/64, decision no. 1990/2; Constitutional Court, 6.2.1990 date and no. 1988/62, decision no. 1990/3, <http://www.anayasa.gov.tr>).

3rd and the continuing paragraphs of Article 91 of the Constitution as follows:

“Resignation or fall of the Council of Ministers, or expiration of the legislative term shall not cause the termination of the power conferred for the given period.

When approving a decree having the force of law by the Grand National Assembly of Turkey before the end of the prescribed period, it shall also be stated whether the power has terminated or will continue until the expiry of the period.

Provisions related to issuing decree having the force of law issued by the Council of Ministers meeting under the chairpersonship of the President of the Republic in time of martial law or states of emergency, are reserved.

Decrees having the force of law shall come into force on the day of their publication in the Official Gazette. However, a later date may be indicated in the decree as the date of entry into force.

Decrees shall be submitted to the Grand National Assembly of Turkey on the day of their publication in the Official Gazette.

Empowering laws, and decrees having the force of law which are based on them, shall be debated in the committees and in the Plenary of the Grand National Assembly of Turkey with priority and urgency.

Decrees not submitted to the Grand National Assembly of Turkey on the day of their publication shall cease to have effect on that day and decrees rejected by the Grand National Assembly of Turkey shall cease to have effect on the day of publication of the resolution in the Official Gazette. The amended provisions of the decrees that are approved as amended shall go into force on the day of their publication in the Official Gazette.”

In the second sentence of Article 91/1 in Constitutional Law, there is a provision indicating that fundamental rights, individual rights and duties defined in the first and second sections of the Constitutional Law other than the cases of martial law and extraordinary situations, besides political rights and duties defined in the fourth section will not be regulated using decrees: *“However, with the exception of martial law and states of emergency, the fundamental rights, individual rights and duties included in the first and second chapters and **the political rights and duties** listed in the fourth chapter of the second part of the Constitution, shall not be regulated by decrees having the force of law.”*

The rights and liberties defined in these sections are mostly regarded as negative status rights. As there are many concerns that any regulation to be made on these will result in restrictions over these rights, these are excluded from the scope of decree laws (Sağlam, 1984, p. 263).

As the article 73, which regulates the tax duties, is defined in the fourth section related to political rights and duties, the Council of Ministers possesses no rights to make decrees on taxations. Therefore, decrees made during ordinary periods are not the source of tax law. However, the decrees made during martial law and extraordinary situations serve as a source in terms of tax law. These are regarded as original sources as they bring new norms (Kırbaş, 2003, p. 46; Karakoç, 2011, p. 94; Üstün, 2007, p. 76).

During extraordinary situations, the discretionary powers of the management are extended when compared to normal periods (Gözübüyük, 1999, p. 283). Furthermore, the Council of Ministers possesses the most comprehensive discretionary power during these periods in the field of taxation (Çağan, 1982, pp. 136-137).

The most significant innovation brought by the 1982 Constitution in relation to the extraordinary situations is the decree laws of extraordinary situations (Tanör & Yüzbaşıoğlu, 2001, p. 402). Such issues which are impossible to make arrangements with decrees at normal times can be made using these decree laws in time of martial law or states of emergency. The principle of tax legality will not apply at time of martial law or states of emergency. In such situations, any regulation related to the fundamental elements of taxation will be made using decrees (Güneş, 1998, p. 166).

Due to the intense economic recession defined in Article 119 of the Constitution, the declaration of an extraordinary situation is a reason of extraordinary situation that interests tax law to a great extent: *“In cases of natural disasters, dangerous epidemic diseases or intense economic recessions, the Council of Ministers holds a meeting in the presence of the President and is authorized to declare an extraordinary situation in some or many parts of the country or all over it, not exceeding a period of six months.”* Basing on this cause, when an extraordinary situation is declared, the Council of Ministers is entitled to make decree laws to determine all obligations and measurements in terms of tax, money, credits and price policies to direct goods, capital and service markets in order to improve and regulate the economy (Gözübüyük, 1999, p. 283).

In Article 121 of the Constitution, it is described that citizens may even be obliged to have additional money; good and working responsibilities in such extraordinary situations as defined in Article 119 and these regulations will be made by law. In Article 122, which regulates the provisions on martial law, mobility and warfare, it is also decreed that extra obligations may be given to the citizens.

Although it is not possible to make regulations on tax duties using decree laws, the Council of Ministers is also entitled to make regulations in the field of taxation using the empowering act defined before 1982. The acts defined in order to improve export rates can be given as an example. Besides, there are also other empowering acts in the Customs Tariff Schedule. According to this, the Council of Ministers is entitled to make reductions over the rates defined in the Schedule including exemptions and, if necessary, to increase these reduced rates to their formerly defined levels (Arslan, 1982, pp. 61-67; Çağan, 1983, pp. 74-75). However, Çağan thinks that although the provisions in Customs Tariff Schedule are in accordance with the Article 61/3 of the Constitution, its empowerment to make regulations on tax duties using a decree is inconsistent with the Constitution (Çağan, 1982, p. 120). In January 12, 1982, this provision is added to the Constitution following the statement made by National Security Council: *“No financial obligation is attributed to anyone or the present obligations cannot be increased using decrees. However, the penalties proposed in the law on contradictory acts against tax laws and such fines including taxes, fees, tolls and similar ones and default interests can be increased or reduced”*. This provision extends the empowering act of the Council of Ministers to make decrees in terms of financial obligations to improve related regulation on it.

In spite of the regulation defined in the Constitution on making no decrees related to tax duties, it is possible to see contradictory applications also in this period. For instance, there has been an amendment in Inheritance and Transfer Tax Law using the decree law No 194, put into effect in 1983. This decree law abolished the difficulties to collect taxes in order to make registration process of real estate properties easier. It is argued in the doctrine that this regulation is not contradictory with the Constitutional Law, as it is not directly related to the core of taxes (Kumrulu, 1991, p. 69; Kütükçü, 2000, p. 159). The decree, making an amendment in the Inheritance and Transfer Tax Law, is not a regulation related to the basic elements of taxation. Therefore, it does not possess a contradiction to the Constitution. However, it is clear that decrees are in contradiction with the Constitution, which puts new exemptions and brings out exceptions, or in other words, regulates the basic elements of taxation (Üstün, 2007, p. 222).

In another opposite viewpoint, there is no contradiction to the Constitution as it prohibits the regulation of tax duties on a large scale even though it brings advantages herein (Çağan, 1984, p. 175). In the decree law numbered 396, put into effect in 1987, the allowances of some judiciary and university members are made an exception to pay income tax. After this period, there are also additional exemptions and exceptions using some other decrees. These also possess a contradiction to the Constitution (Kumrulu, 1991, p. 70; Kütükçü, 2000, pp. 160-163; Üstün, 2007, p. 77).

3. AUTHORITIES ENTITLED TO THE COUNCIL OF MINISTERS ON TAXATION

One of the most important changes made in the 1971 Constitution is the recognition of making limited amendments on taxation by the Council of Ministers. Therefore, this statement is added to Article 61 to regulate tax duties in the Constitutional Law: “*The Council of Ministers may be empowered to amend such provisions on the limitations and measures of tax, toll and fee exemption and exception, basing on the limitations defined below and above and the principles of the law.*” This provision gives the management a discretionary power on taxation under a constitutional roof (Üstün, 2007, p. 60). Hereby, many provisions described in Turkish taxation system extricated from termination by the Constitutional Law (Aliefendioğlu, 1981, p. 85; Üstün, 2007, p. 60 vd.; Çağan, 1982, pp. 95, 118).

The article 73/4 of the 1982 Constitution includes the following provisions about the discretionary authority of tax administration: “*The Council of Ministers may be empowered to make amendments within the lower and upper limits prescribed by the law on provisions of exemptions, exceptions, reductions and rates related to taxes, duties, fees and other such financial obligations*”.

The Council of Ministers is authorized in terms of discretionary power as defined in Article 73/4 of the Constitution. This authorization can only be used by the Council of Ministers and can never be assigned to others. Besides the fact that the Council of Ministers cannot assign these authorizations described on its behalf, it also cannot assign it to another authority using a legal act (Güneş, 1998, p. 159; Arıkan, 1996, p. 23; Doğrusöz, 1985, p. 76).

The discretionary power defined in Article 73/4 of the Constitution is restricted on several viewpoints. Before all, the Cabinet is authorized on this issue and this authorization can only be entitled by a legal act. However, this authorization can be used within the lower and upper limits defined by law. Therefore, a tax, all elements of which are previously regulated by law, must be found and the Cabinet must be authorized to amend, defining the lower and upper limits in terms of fore-mentioned elements using the law again (Güneş, 1998, p. 156; Üstün, 2007, p. 65).

Following the principle of tax legality, the fundamental elements on taxes must absolutely be regulated by law. These fundamental elements of taxation process involve the scope of tax, reasons of that tax, taxpayers, tax assessments and rates (tariff) and they definitely require a regulatory act (Güneş, 1998, pp. 122-127; Çağan, 1982, p. 127). Otherwise, it is possible to result in arbitrary applications.

The most frequent way of using this authorization entitled to the Council of Ministers involves the decisions of the Council of Ministers, also called as “decrees of the Council of Ministers”. If no statement is made on the action types of using this discretionary power, the Council of Ministers is free to select any action type. As the Constitution only regulates decrees, regulations and guidelines; such regulatory actions as general communiqué, general orders, memorandums and circulars are called as ‘untitled legal actions’ especially by the Cabinet (Tanör & Yüzbaşıoğlu, 2001, p. 392; Tekbaş, 2002, p. 43; Üstün, 2007, p. 221). The decisions made by the Council of Ministers constitute a real source for them to obey their new norms.

4. AN EVALUATION ON USING THE POWERS DEFINED IN THE ARTICLE 73/4 OF THE CONSTITUTION TOGETHER WITH DECREES

As there is no provision in the Constitution and in other authorizing legislations, the Council of Ministers has a discretionary power to choose which type of action to use. The Council of Ministers uses this discretionary power on taxation by the decisions of the Council of Ministers, especially due to its simplicity when making it. Due to such reasons that there requires an empowering law in decrees and they are limited for a certain period; and the ‘regulations’¹ require a supervision of Danıştay (State Council), the Cabinet prefers to use its discretionary power with the decisions of the Council of ministers. Although these decisions are similar to regulations in general, they

¹ Article 15: “The Council of Ministers may issue regulations indicating the implementation of laws or designating matters ordered by law, as long as they do not conflict with laws, and are examined by the Council of State”.

are different in terms of both their contents and procedures. While the Council of Ministers is entitled with a general authorization to describe the application of legal acts or to determine the actions ordered using ‘regulations’, the Council of Ministers is only authorized to make regulations on taxation and foreign trade and in a limited way, following the provisions of Articles 73/4 and 167/2 of the Constitution (Tanör & Yüzbaşıoğlu, 2001, p. 387 vd.; Arıkan, 1994, p. 156).

The authority to issue decrees is an authority which strengthens the executive branch. First of all, decrees are one of the regulatory acts and is a form of discretion at the same time. The purpose scope and principles of the decree are indicated in the empowering law. Authority given to the Council of Ministers is drawn wide. Decrees are equivalent with the law. Because of this, decrees comes before all other regulatory procedures at the hierarchical ranking of legal procedures. Thus, the other regulatory processes of administration must comply with decrees.

First paragraph of the 91st article of Constitution have the provision: “...and the political rights and duties listed in the fourth chapter of the second part of the Constitution, shall not be regulated by decrees having the force of law.” The 73rd Article of Constitution which regulates tax duties is located under the political rights and duties. Because of this, tax regulations will not be done by the decrees. However the prohibited issues here are the issues to be regulated by the law (Üstün, 2007, p. 221). So the arrangements of issues which are outside the scope of the 4th paragraph of the 73rd article of Constitution, can not be done with the decrees naturally. This result is achieved when the article 91/1 interpreted in conjunction with the article 73/3.

Already, the issues except with the fundamental rights, individual and political rights and duties can be held by decrees. In this areas, decrees can arranged the issues which are located under the monopoly of the legislature. Thus, the prohibited matter about decrees on tax duties is the issue regarding to the legislature monopoly about the basic elements of taxation. This provision is in harmony with the principle of legality of the tax and in some sense strengthens this principle (Üstün, 2007, pp. 221, 222).

The authority granted to the Council of Ministers about tax duties is different from the authority to issue decree laws. The exemptions, deductions and rates which are one of the most important elements of the taxation, are considered as well as in the field of legislative regulations and in the field of administrative regulations. So the authority given to the Council of Ministers by the article 73/4, represents a wider authority according to the decrees. In a sense, the administration authority on taxation was brought to a regular and continuous situation on condition that based on a legal arrangement (Duran, 1973, p. 289; Arıkan, 1994, p. 156; Arıkan, 1996, p. 17). An empowering law is needed for decrees. And the empowering law shall define the purpose, scope, and principles of the decree having the force of law, the operative period of the empowering law, and whether more than one decree will be issued within the same period. Nevertheless there is no necessity for the decisions of the Council of Ministers. So without the need for any separate empowering law, the Council of Ministers will make the changes about specified taxation elements. Furthermore, the decrees should be submitted to the approval of parliament. Whereas there is no mandatory for the decisions of the Council of ministers (Kırbaş, 1984, pp. 39-40; Tekbaş, 2003, pp. 164-165).

The issue that the authority which is given by the article 73/4 of Constitution whether can be used by decrees is being discussed in doctrine. According to one view, tax regulations can not be done by decrees accordance with the article 91/1 of Constitution. The limits which are stated in the article 73/4 of Constitution are also included in this case. Thus, the discretionary authority which is arranged in the article 73/4 of Constitution can not be used with the decrees (Aliefendioğlu, 1981, pp. 85-86). According to another aspect which is more accurate; there are no obstacles for the Council of Ministers to use the authority regulated in the article 73/4 of Constitution with the decrees. However there is no practical benefit, because the decrees requiring a longer and more difficult procedure compared to the decisions of Council of Ministers (Güneş, 1998, pp. 159-160). Because the prohibited issue for making arrangements about taxation by decrees is related to the basic elements of the taxes; the Council of Ministers may use the authority regulated in the article 73/4 of Constitution by decrees. This authority can be used by decrees which is a higher type of legal transaction in hierarchical way than the decisions of the Council of Ministers.

The National Security Council had proposed adding the following provision to the constitution, at 01.12.1982, during the preparation of new Constitution: “*Financial liabilities can not be implemented and current liabilities can not be increased by decrees; however tax penalties prescribed in laws and taxes, duties and related penalties and overdue interests can be reduced or removed*”. This arrangement actually indicates that it is possible to make arrangements with the tax issues by decrees.

In the same way, there should not have been a drawback to give authority to the Council of Ministers to make arrangements by decrees about the tax issues that can be arranged even by the Ministry of Finance. Importantly, the Council of Ministers should not be authorized about the tax issues that should be regulated by law. The Council of Ministers use the authority granted to itself by the decisions of The Council of Ministers instead of decrees due to the length and the difficulty of extraction process of decrees. There is no need for a separate empowering law and the authorization is not limited for a certain time period for the decisions of the Council of Ministers. This case provides the speed and quickness which requires the exercise of discretionary power (Üstün, 2007, p. 222).

According to another opinion, the use of powers conferred under the article 73/4 of Constitution with decrees has some drawbacks. For example, in case of using these powers with decrees, two equal rule of law will be in force; the first one is the provision of tax code including the upper and lower limits and the other is the provision of decree amending within these limits. According to this view, if the provision of the tax law eliminated by decree, the upper and lower limits arranged in the law would become meaningless. If the tax law provision stand although the provision of decree, then there will be two legal texts which regulate the same subject in force. Thus, using the authority regulated at the article 73/4 of Constitution with decrees, will be both wrong and useless (Tekbaş, 2003, pp. 168-170). However, it is hardly possible to attend this criticism. A similar situation will also occur, when the authority used with the decisions of the Council of Ministers. The provision of the law will also be changed in a sense when the authority used with the decisions of the Council of Ministers, but changing subject is only the rate or amounts of taxes within the upper and lower limits. Even if the criticism had to be accepted, the problems that arise can be resolved with the relation of 'general law - private law'. Accordingly the decree issued after would be eliminate the contrary provisions of its predecessor relevant laws. Also in this case, the removed or changed provisions are only the amounts or rates within the upper and lower limits; the upper and lower limits would not be removed (Üstün, 2007, pp. 222-223).

It has been suggested that using the discretionary power, arranged in the article 73/4 of Constitution, with decrees would be substantially more appropriate. In this regard making such regulations at the relevant article has been proposed (Doğrusöz, 2002). The reason for this proposal is based on the efforts on limiting the power of taxation in the process of the historical development of tax law. This opinion is based on the fact that the decrees provide more assurance to people compared to normal decrees (decisions of Council of Ministers). According to this view, regular decisions can be issued retroactively, but it is not possible such a retroactivity for decrees. The decrees are submitted to the approval of the parliament. As a result of this, political control is also mentioned. This situation indicates that decrees provide more assurance to people than normal decrees. Therefore the authority given to the Council of Ministers by the article 73/4 of Constitution must be used with decrees, according to the author. However changes in the Constitution must needed for this. Doğrusöz proposes a modification at the article 73/4 of Constitution as follows: “The Council of Ministers may be empowered to make amendments with decrees within the lower and upper limits prescribed by the law on provisions of exemptions, exceptions, reductions and rates related to taxes, duties, fees and other such financial obligations for a definite or indefinite period. The decrees having the force of law about taxation issue, shall be debated in the committees and in the Plenary of the Grand National Assembly of Turkey with priority and urgency” (Doğrusöz, 2002).

Indeed, making arrangements about taxation with decrees seems much more appropriate in terms of legal security of individuals. The arrangements made by decrees must also be presented to parliament for approval. Because of this, making arrangements about taxation by decrees is much more appropriate than normal decisions when considering the historical fights to gain taxation authority for the parliaments. Making amendments about taxation by decrees is obviously more suitable to the essence and the results of this historical struggle (Üstün, 2007, p. 224).

However, it is also clear that some of the drawbacks found considering the characteristics of the decisions of the Council of Ministers with decrees. For example, judicial organs are different for decrees and decisions. This leads to the emergence of different results in case of cancellation of these transactions. The Constitutional Court examines the constitutionality of the decrees having the force of law. Decisions of the Council of Ministers shall be examined by Danıştay (the Council of State). While the Constitutional Court decisions can not be implement retroactively; in case of cancellation of decisions of the Council of Ministers by Danıştay (the Council of State) the transaction will disappear from the moment it was first made. Therefore, the decrees would produce their provisions and results until cancellation by the Constitutional Court. In case of cancellation; this may lead to the emergence of inequality between taxpayers (Üstün, 2007, p. 224).

5. CONCLUSION

It is not possible to make regulations about tax duties with decrees. In this respect, the decrees issued in the normal period are not a source of tax law. But making regulations about tax duties with decrees is possible during periods of martial law and states of emergency. Therefore, decrees issued during periods of martial law and states of emergency are considered as an essential source of tax law.

The authority to make limited changes on taxes granted to the Council of Ministers by the article 73/4 of Constitution is used by the the decisions of the Council of Ministers as a rule. It is debated that the authority granted to the Council of Ministers about tax duties whether can be used or not with decrees. There are opposite opinions about making regulations about tax issues with decrees. However, this authority can be used by decrees which is a higher type of legal transaction in hierarchical way than the decisions of the Council of Ministers. In fact, such an approach would be more appropriate to the essence of the principle of legality of the taxes. Because the changes are ultimately submitted to the approval of parliament.

If the authority to issue decrees to arrange the taxes be brought into a general authorization, it might have led to some difficulties in practice. The Constitutional Court examines the constitutionality of the decrees having the force of law. Decisions of the Council of Ministers shall be examined by Danıştay (the Council of State). While the Constitutional Court decisions can not be implement retroactively; in case of cancellation of decisions of the Council of Ministers by Danıştay (the Council of State) the decision will disappear from the moment it was first made. As a result, although it cause a number of problems within, it is theoretically possible that using the authority given to the Council of Ministers on taxes with decrees.

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