



Precedents under Turkish Labor Law

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Until recently, Turkish Court of Cassation had two chambers overseeing the labor law disputes: i.e., the 9th and 22nd Civil Chambers. The 22nd Chamber merged into the 9th Chamber in September 2020. Following this, the 9th Chamber announced 41 precedents (ilke kararı) to clarify¹ the questions arising from the dissenting precedents of these two chambers.

Given their importance in practice, we set out below explanations on three of these precedents:

1. Evidencing overtime

The 22nd Chamber generally² overturned the employees' witness-based overtime claims to the extent that the employer evidences the lack of overtime with payrolls and bank receipts. The 9th Chamber ruled under its precedent that the employee can successfully raise such overtime claim with any evidence (including the witness statements) unless the employee had signed the payrolls. Going forward, keeping signed payrolls will be a more important item under the employers' HR checklists.

2. Choice of law

The 9th Chamber, by directly applying Turkish law, had ruled³ that a choice of law, other than the choice of Turkish law, will not stand on foot under employment contracts of the Turkey-based employees working abroad. The precedent⁴, on the other hand, permits such choice of law clauses even in the circumstances where such law is not related to the employment contract. The only caveat under this precedent is that the choice of law must not be contrary to the mandatory rules of the law of the country in which the employee habitually carries out his work. In view of this precedent, the compliance with the labor legislation of such country will now be more important for Turkish employers that engage in outbound investments.

3. Employer Claims Based on Absence of Definite Term

The termination of a definite term employment contract without a just ground entitles the employee of the receivables that would have accrued had the contract not been terminated (i.e., the receivables between the termination and the end of the definite term). In practice, the employers often argue that there is no genuine definite term contract in place due to the lack of objective grounds⁵ required for the conclusion of such contract under Turkish law. And the Court of Cassation had previously ruled⁶ in support of this position. The new precedent⁷, however, sets forth that such argument will amount to abuse of right and thus will not be upheld.

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¹ These precedents are not legally binding on the courts (i.e., the courts can take a different positions). The reason why these judgements qualify as precedents is that a judge serving at the 9th Chamber recently announced (<https://www.youtube.com/watch?v=tneFJHqC1dE>) that the said 41 judgements should be treated as the precedents of the Court of Cassation going forward. In fact, the precedents are merely slightly more detailed judgements of the 9th Chamber.

² The reason why we say "generally" is that the witness statement is admitted in cases where a payroll is treated to be fraudulent. For instance, the Court of Cassation ruled that the accrual of same overtime under each payroll would give rise to such fraud.

³ e.g., the decision of the 9th Chamber No. 2012/8226E - 2012/36419K, and dated 6 November 2012.

⁴ e.g., the decision of the 9th Chamber No. 2020/5617E - 2020/16556K, and dated 24 November 2020.

⁵ Existence of certain objective situations (e.g., the need to complete a work in a certain period,) is a must for conclusion of a definite term employment contract. For instance, employees can be recruited under a definite term employment arrangement if a bridge must be constructed within certain milestones.

⁶ e.g., the decision of the 9th Chamber No. 2011/23217E - 2013/20781K, and 8 July 2013.

⁷ e.g., the decision of the 9th Chamber No. 2016/26476E - 2020/7547K, and dated 14 September 2020.