

Constitutional Court Partially Annuls the Article of the Law on Private International and Procedural Law Governing the Law Applicable to Employment Contracts

26 Mar 2025

The Constitutional Court of Türkiye ("**AYM**"), in its decision dated November 5, 2024, numbered 2024/187 ("**Decision**"), ruled that Article 27(1) of the Law on Private International and Procedural Law No. 5718 ("**MÖHUK**"), which determines the law applicable to employment contracts, is unconstitutional and annulled the provision. However, the Court rejected the annulment request regarding Article 27(2) of the same law, which stipulates that the law of the workplace where the employee habitually performs their work shall apply. The Decision was published in the Official Gazette dated March 10, 2025, and numbered 32837.

Grounds for the Decision

In the application submitted to the Constitutional Court, it was argued that the provisions of Article 27 of MÖHUK governing the law applicable to employment contracts violate the principles of rule of law, equality, proportionality, and the right to legal remedies. The Court, in its assessment, based its reasoning on the following grounds:

- **Choice of Law in Employment Contracts:**

The Court emphasized that allowing parties to choose the applicable law in employment contracts carries the risk of creating a mechanism that may operate to the detriment of the employee. Since the employee is the weaker party in the contract, they may be subjected to a legal system imposed by the employer, which provides less protection. This situation contradicts the state's obligation to protect workers' rights. The Court emphasized that the protection of employees' economic and social rights falls within the state's positive obligations and therefore ruled for the annulment of the provision.

- **Failure to Apply a More Closely Connected Law:**

The Court criticized the lack of a safeguard preventing the application of a chosen law that provides less protection than the mandatory provisions of the employee's habitual workplace law. It highlighted that the law governing the employee should not be left solely to the parties' agreement and that minimum guarantees must be ensured to protect the employee.

- **Habitual Workplace Law:**

Article 27(2) of MÖHUK provides that if no choice of law is made in the employment contract, the law of the workplace where the employee habitually performs their work shall apply. The Court found that this regulation includes adequate safeguards for protecting employees' rights and does not violate the Constitution, thereby rejecting the annulment request. Additionally, the Court emphasized that protecting the habitual workplace law in international labor relations is a critical safeguard for employee rights.

Implications and Implementation of the Decision

With this Decision, the Court established that in employment contracts, a chosen law cannot be applied if it provides lower protection than the employee's habitual workplace law. Additionally, since the inability to apply a more closely connected law may lead to employee exploitation, Article 27(1) of MÖHUK has been annulled. In contrast, Article 27(2) of MÖHUK, which upholds the habitual workplace law, has been retained as it provides adequate safeguards for protecting employee rights.

The annulled provision will take effect six (6) months after its publication in the Official Gazette. The full text of the decision can be accessed via this [link](#).

Related Practices

- Employment and Labor
-

Related Attorneys

- A. KAN BAŐER, LL.M.
 - BAŐAK GÜRPINAR
-