

## Termination of an Employment Contract due to Social Media Posts Violates the Right to Respect for Private Life and Freedom of Expression

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In the case regarding the termination of the employment contracts of the applicants due to their social media posts, the Constitutional Court decided that the right to respect for private life and freedom of expression were violated, whereas the right to trial within a reasonable time was not violated due to the long duration of the applicants' re-employment cases. This decision was published in the Official Gazette dated 22 November 2023 and numbered 32377.

The Constitutional Court evaluated the application process and decided that **(i)** the right to respect for private life and freedom of expression were violated and **(ii)** the right to a fair trial was not violated.

In the individual application to the Constitutional Court, it was claimed that the right to respect for private life, freedom of expression and the right to trial within a reasonable time due to the long duration of the re-employment proceedings were violated upon termination of the employment contract due to social media posts.

The Constitutional Court unanimously rejected the allegation of violation of the right to trial within a reasonable time, and unanimously decided to accept the allegation of violation of the right to respect for private life guaranteed under Article 20 of the Constitution of the Republic of Türkiye ("**Constitution**") and the right to freedom of expression guaranteed under Article 26 of the Constitution.

The Constitutional Court's assessment is summarized as follows:

- Article 20 of the Constitution guarantees privacy of private life and Article 26 guarantees freedom of expression.
- The applicants, generally targeted politicians, the government, administrators using public power and their political and administrative behavior in their social media posts. The issues addressed in the social media posts were of public interest and the framework of the speeches, which were of close concern to the society, remained to a considerable extent in the political sphere. Accordingly, the applicants' social media posts were considered within the scope of freedom of expression.
- Furthermore, it has not been argued that the applicants made the social media posts during working hours and at the workplace and that the applicants failed to fulfil their responsibilities arising from the employment contract. It has not been accepted by the courts that these social media posts had anything to do with the applicants' work, workplace or employer.
- The direct acceptance of situations occurring in the personal sphere, which are not carried out at the workplace or with work tools, do not have an impact on the functioning of the work, as a termination reason, will result in the disruption of the balance that needs to be protected by the state under positive obligations between the employer's interests and the employee's interests.
- The Constitutional Court considered that the courts did not analyze the possible effects of the applicants' social media posts sufficiently and in detail. Similarly, the courts failed to provide relevant and sufficient grounds for accepting that "the relationship of trust" between the applicants and the employer had "broken down" and that "the posts caused a negative impact on the workplace" when the posts on current social issues were used as grounds for the termination of the employment contract.
- In conclusion, a diligent judicial process ensuring the guarantees set out in the Constitution regarding freedom of expression has not been conducted by the courts of first instance that resolved the dispute. On the other hand, the Constitutional Court did not accept the applicants' claim that their right to be tried within

a reasonable time was violated due to the fact that the re-employment cases lasted 2 years and 11 days, as it was clearly lacking in grounds.

Please see this [link](#) for the full text of the Constitutional Court's decision with the application number of 2019/10975, published in Official Gazette dated 22 November 2023. (Only available in Turkish)

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