

Turkey's Court of Cassation Decided in relation to Termination of the Employment Contract Without Taking the Employee's Statement

21 Jun 2019

Turkey's Court of Cassation recently ruled that in case of terminating the indefinite-term employment contract due to medical leaves, employers are not obliged to take the employee's statement.

According to paragraph 1/(b) of article 25 of the Labor Law numbered 4857 (the '**Labor Law**'), the employer is entitled to terminate an indefinite-term employment contract rightfully, if the employee's medical leaves exceed the notification term stipulated under article 17 by six weeks. However, the article does not indicate whether the employer is obliged to take the employee's statement before termination of an employment contract due to reasons stipulated under paragraph 1/(b) of article 25.

As per article 19 of Labor Law, taking the employee's statement is mandatory before terminating the indefinite-term employment contract due to behavior or productivity of the employee. However, termination based on the violation of moral rules and goodwill outlined under the second paragraph of article 25, is excluded from this scope.

Article 25 also stipulates the provisions that the employees can depend upon to claim the invalidity of the termination, yet article 19 stipulating the requirement of taking the employee's statement is not included among them. The preamble of article 19 indicates that employer is not bound to take employee's statement before terminating the contract due to employee's mental or physical inadequacy.

Within this context, uncertainty arose regarding the obligation of taking the employee's statement before termination of the indefinite-term employment contract due to reasons stipulated under paragraph 1/(b) of article 25. The General Assembly on the Unification of Judgements of the Court of Cassation (the '**General Assembly**') decided to settle the uncertainty between different chambers of the Court of Cassation.

The General Assembly ruled that:

- Employee's absence due to medical reasons exceeding the notification term stipulated under article 17 by six weeks, is sufficient for the employer to terminate the employment contract rightfully;
- Within this context, taking the employee's statement before termination of the employment contract as per paragraph 1/(b) of article 25 of Labor Law is not mandatory.

The Court of Cassation indicated in the preamble of the decision that

- Terminations due to the reasons stipulated as per paragraph 1/(b) of article 25 cannot be considered as realized due to behavior or productivity of the employee

- Taking the employee's statement before termination realized as per article 25 is not set forth as a condition for validity of the termination.

Please see this [link](#) to read the full text of General Assembly's decision dated 19 October 2018 and numbered 2018/10, which was published in Official Gazette numbered 30769 on 9 May 2019 (only available in Turkish).

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