

## Turkish Constitutional Court: Contradictory Statements By Lower Court About Final Date of Employment Violate Right to Fair Trial

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Turkey's Constitutional Court recently considered a claim that unclear statements in a lower court's decision about a party's final date of employment had breached his constitutional right to a fair trial. The Constitutional Court upheld the employee's claim, holding that contradictory statements could cause the employee to make an error and therefore violate his right of access the court.

In the case at hand, an employee filed a claim against his employer for unpaid receivables. Due to lack of written records, the First Instance Court relied on witness declarations to determine that the employee had worked for the employer for over 27 years.

The First Instance Court partially accepted the employee's claim, holding that the employment contract was terminated in 2007 due to the workplace closing, but the employee was not paid certain receivables. The employer appealed the decision, but the Court of Cassation approved the lower court's decision.

The First Instance Court's reasoning states the employee worked at the workplace between 1 June 1979 and 31 December 2006. However, the termination date for the employment contract is indicated as 31 December 2006, as well as 1 January 2007 (in some parts of the decision).

In December 2012, the employee initiated a separate action to determine the duration of his insurance coverage. The Court held that cases seeking to determine the duration of insurance coverage must be filed within five years, starting from the end of the last year of employment (Article 79(10) of Social Insurance Law No. 506). Accordingly, it rejected the claim on the basis that it was filed after this period had expired. The employee appealed the decision, but the Court of Cassation rejected the appeal.

The employee escalated the matter to the Constitutional Court, claiming unclear statements in the First Instance Court's decision about the final date of employment had breached his constitutional right to a fair trial (Article 36 of the Constitution).

The Constitutional Court held that the statements in question could cause the employee to make an error and therefore the First Instance Court's decision was incorrect.

Therefore, the Constitutional Court held that rejecting the case based on time expiring would make it impossible to evaluate the employee's claims about unpaid receivables and pension rights. It held that the employee's last day of employment had not been adequately investigated and this violated his right of access the court.

Accordingly, the Constitutional Court sent the case back to the First Instance Court for a re-trial.

Please see this [link](#) for full text of the Constitutional Court's decision, made on 27 September 2016, with application number 2014/16928 (only available in Turkish).

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