

## Turkish Constitutional Court Decided that the Compulsory Pre-Mediation Process Set Forth in the Labour Court Law is Not Unconstitutional

*4 Feb 2019*

Turkish Constitutional Court ruled that:

- compulsory pre-mediation process introduced with the Labour Courts Law Number 7036 (**the "Labour Courts Law"**) with respect to lawsuits initiated for labour receivables and compensations as well as re-employment claims and
- the legal provision which shortens the prescription period of compensation claims arising from termination of employment contract

are not unconstitutional.

As per Article 3 of the Labour Courts Law, recourse to mediation process was introduced as a compulsory prerequisite for filing lawsuits for claims related to labour receivables and compensations based on law, individual or collective employment contract as well as for re-institution of employment.

Further, Additional Article 3 of the Labour Law Number 4857 introduced with Article 15 of the Labour Courts Law determines the prescription period of claims related to annual paid leave and the following compensations, provided that these arise from an employment contract and regardless of law to which they are subject, as five years:

- Severance payment
- Compensation arising from termination without complying with notice requirements
- Bad faith compensation
- Compensation arising from termination without complying with the equal treatment principle.
- was claimed that the requirement to apply to mediation process
- increases injustice by forcing employees, who are in a weak position compared to employers, to waive their rights
- is contrary to the principles of employee protection and interpretation in favour of employees
- causes employees to be forced to negotiate and consent to an amount less than they deserve.

Furthermore, the applicant also claimed that the failure to provide employees an opportunity to act with free will and shortening of the prescription period (for compensation claims related to the annual paid leave and arising from termination of the employment contract), are against the constitutional right to legal remedies.

Turkish Constitutional Court stated that:

- the mediation is an alternative dispute resolution method
- the mediation provides a way of communication to the parties to understand each other and thus to produce their own solutions
- the mediation is based on the balance of the benefits of both parties in the most appropriate way, and
- even though mediation is a requirement, such requirement is only limited to the application. The will of the parties matters during the process and with respect to conclusion of mediation.

The Court also explained that the mediation process aims to settle disputes definitively and permanently in a shorter time and cost effective way.

Further, the Court decided that five years' prescription period for claims related to annual paid leave and arising from termination of employment contract, is adequate and reasonable for the conclusion of required preparations and use of the right of litigation.

Due to these reasons, the Court decided that these provisions are not contrary to the Constitution and rejected the request for cancellation.

Please see this [link](#) for the full text of the Turkish Constitutional Court's decision number 2017/178 E. and 2018/82 K. dated 11 July 2018 (only available in Turkish).

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