

Turkish Constitutional Court: Sub-Employer's Staff Cannot Benefit from Primary Employer's Collective Labour Agreements

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Turkey's Constitutional Court recently ruled that a sub-employer's employees cannot benefit from rights which arise from the primary employer's collective labour agreements. The court held that the legal situation of the primary employer's employees is different to the sub-employer's employees. It stated that while the primary employer is jointly liable for labour claims, the sub-employer's employees cannot benefit from any collective labour agreement which the primary employer is a party to. The Constitutional Court held that this does not breach the constitutional equality principle.

In the case at hand, a lower court requested the Constitutional Court consider Article 2(7) and Article 2(9)(b) of the Labour Code, claiming these provisions are against the right to labour and the principle of freedom of contract. In general terms, the relevant parts of these provisions state that a primary employer is conjointly responsible to a sub-employer's employees for claims arising from collective agreements signed by sub-employers and employees of public entity's sub-employers cannot benefit from collective agreements.

The Constitutional Court stated:

- As per Article 2(7) of the Labour Code, primary employers are jointly liable with sub-employers in relation to a sub-employer's employees in terms of obligations which arise from the Labour Code, labour contract, or any collective labour agreement which the sub-employer is party to. The rule protects employees by assigning liability to the primary employer if a sub-employer (which generally have small budgets) becomes unable to pay a labour claim.
- However, a sub-employer's employees cannot benefit from a collective labour agreement signed by the primary employer based on this regulation. Similarly, a sub-employer's employees cannot benefit from collective labour agreements signed for public employees (Article 2(9)(b)).
- A sub-employer's employees are deemed to work in a separate workplace and there is no labour agreement signed between the primary employer and sub-employer's employees. Therefore, there is no labour relationship between them.
- If the sub-employer has signed a collective labour agreement, its employees can benefit from these terms.
- The primary employer only becomes jointly responsible with the sub-employer for collective labour agreements which the sub-employer is a party to.
- To benefit from collective labour agreement, employees do not necessarily need to be a member of a labour union which is party to a collective labour agreement. Rather, employees can benefit from the agreement by paying a solidarity fee or by receiving approval from the labour union.
- The legal situation of a sub-employer's employees and the primary employer's employees are not the same. Likewise, public employees and sub-employer's employees working in public enterprises do not have the same legal status. Therefore, issuing different regulations for people who have different legal status is not against the principle of equality.

Please see this [link](#) for the full text of Constitutional Court decision numbered E. 2016/2, K. 2016/198, dated 28 December 2016 (only available in Turkish).

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