

Turkish Court of Cassation: “The Penal Clause due to Early Unjust Termination” is Valid Only for the Period Specified in the Labor Contract

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The General Assembly on the Unification of Judgments of the Court of Cassation ("**Assembly**") decided that penal clause due to early unjust termination of a labor contract is valid only for the time period stated in the contract, if the labor contract is made for a definite term but deemed as indefinite due to lack of objective conditions.

The First Presidential Board of the Court of Cassation decided to settle the uncertainty between different chambers of the Court of Cassation, by the Assembly.

9th Civil Chamber of the Court of Cassation stated that *"if the definite term labor contract does not foresee a minimum period, it will be deemed as indefinite unless there is an objective reason. Consequently, the time-related penal clause is invalid."*

On the other hand, 22nd Civil Chamber of the Court of Cassation decided that *"The invalidity of the parties' will regarding the contract term should not affect the validity of the provision regarding the penal clause stipulated to prevent unjust termination of the contract within a specified period."*

As explained by the Assembly, the reason for the provision of penal clause in the labor contracts is to guarantee the execution of the debt and to force the parties to perform their duties on time and properly.

In the labor law, the penal clause is most commonly found in the definite term contracts and minimum-term contracts. In definite term contracts, a penal clause is used to prevent unjust termination of a contract before foreseen time period. The main purpose here is to protect the trust of the parties to fulfill their debts within the period specified in the contract as well as preventing the termination of the contract unjustly before a certain period. Definite term labor contracts that do not meet objective conditions are considered the indefinite term. The main issue to be examined is whether the penal clause which is used to prevent unjust termination of the contract before the period foreseen by the parties is valid or not.

The fundamental principle that dominates the Turkish Code of Obligations ("**TCO**") is the will autonomy principle and the natural result of this principle is the freedom of contract. Freedom of Contract is not absolute and contains some limitations. According to article 27 of the TCO:

- A contract is null and void if the terms of which are impossible, unlawful or immoral or in contrary to public order or fundamental human rights.
- If certain terms of a contract are null and void, this shall not affect the rest of the terms of a contract. However, the contract is deemed as completely null and void if there is a reason to assume that it would not have been concluded without the said terms.

Consequently, the Assembly concluded that:

- Even though the labor contract is deemed as indefinite due to the lack of objective reasons, the superiority of the parties' will should be acknowledged by applying the sanction of partial invalidity in accordance with article 27/2 of the TCO.

- The provision of penal clause condition due to unjust termination was valid for the agreed period.

Please see this [link](#) for the full text of the Court of Cassation's decision dated 8 March 2019 published in the Official Gazette dated 18 July 2019 and numbered 30835 (only available in Turkish).

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