

## Turkish Supreme Court: The Statute of Limitation is 10 Years for Recourse Claims Between the Main Employer and the Subcontractor

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23<sup>rd</sup> Chamber of the Supreme Court established that the statute of limitations shall be applicable as 10 years for recourse claims between the main employer and the sub-contractor under a subcontracting agreement.

In the event of a valid subcontracting agreement, the main employer and the sub-contractor will jointly be liable for the debts which are owed to subcontractor's employees as per article 2 paragraph 6 of the Labor Law numbered 4857 ("**Labor Law**").

In this regard, the employees of the sub- employer may claim their employment receivables either from the sub-employer or from the main employer. If a party pays the whole debt amount or pays more than the amount which they can be held liable, such party will have the right to apply to the other party and claim the over-paid amount by way of recourse.

Unless otherwise stated under the law, every receivable claim is subject to a 10 years statute of limitation as per Article 146 of the Turkish Code of Obligations numbered 6098 ("**TCO**").

However, Article 73 of the TCO sets a 2 years' statute of limitations for the right to recourse is 2 years. Such a period of 2 years starts when compensation is paid, and the payer learns who the other joint liable party is.

With regard to the lawsuit before the Supreme Court; the debts owed to the employee were paid on 20 August 2013 and the lawsuit concerning the right to recourse was initiated on 22 February 2016. The Local Court has rejected the claim, stating that the period of limitation of 2 years has lapsed in accordance with Article 73 of the TCO.

Upon the Ministry of Justice's request, the Supreme Court's Prosecution Office has appealed against the judgment of the Local Court.

Supreme Court's 23<sup>rd</sup> Civil Chamber has stated that;

- The agreement between the main employer and the sub-contractor should be deemed as a service procurement agreement,
- There is no special statute of limitation provisions within the law regarding service procurement agreements,
- Therefore, the 10-year limitation period under Article 146 of the TCO would be applied.

Local Court's judgment was reversed following the appeal of the Supreme Court's Prosecution Office and the examination of the Supreme Court's 23<sup>rd</sup> Civil Chamber.

In consequence of the decision by the Supreme Court, the statute of limitations must be 10 years instead of 2 years for the lawsuits between the main employer and the sub-contractor which are initiated regarding the right to recourse, after the payment is made to subcontractor's employee.

Please see this subcontractor's [link](#) for the full text of the Supreme Court's 23<sup>rd</sup> Civil Chamber's decision dated 3 October 2019 with file number 2017/2002 and decision number 2019/4059 (only available in Turkish).

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