International
e-ISSN:2587-1587
SOCIAL SCIENCES STUDIES JOURNAL
Open Access Refereed E-Journal & Indexed & Publishing
Original Article
Article Arrival : 09/09/2021
Published : 15.11.2021
Doi Number http://dx.doi.org/10.26449/sssj.3502
Reference Bingöl, S. (2021). "Can Healthcare Personnel's Right To Leave Their Job Be Prevented In Turkish Law?" International Social Sciences Studies Journal, (e-ISSN:2587-1587) Vol:7, Issue:89; pp:4359-4366

CAN HEALTHCARE PERSONNEL'S RIGHT TO LEAVE THEIR JOB BE PREVENTED IN TURKISH LAW?

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ABSTRACT

The Covid-19 epidemic, which has affected the whole world, has affected all areas of life, and undoubtedly the health sector has taken the biggest share of these effects. The serious deterioration of the working conditions of the health personnel, deaths, psychological and physical burnout of the health workers are the negative aspects that can be considered at first. In addition, as a result of the rapid increase in the number of patients and the concerns that the current health system and the number of personnel may be insufficient in the face of the increasing number of patients, some regulations have been issued by the Ministry of Health. In our study, the restrictions imposed by the Ministry of Health with the Circular on the right of health personnel to leave work are examined.

Keywords: healthcare personnel, job, labour law.

1. INTRODUCTION

In 2020, when the Covid-19 epidemic was experienced, physicians, nurses and other allied health personnel were at the forefront of the fight against this epidemic. In this process, many healthcare workers have died due to the virus and continue to die. Undoubtedly, among the health professionals, there were those who were very worried for personal or family reasons and did not want to continue their work.

Upon the increase in the number of health personnel who did not want to continue working, the Ministry of Health General Directorate of Health Services issued the Circular dated 27.03.2020 and numbered 54718026. In this Circular, it was decided not to allow any health personnel working in all public and private health institutions and organizations to leave their duties / jobs until a second announcement for 3 months within the scope of the pandemic process[1].

In our study, it will be focused on whether the said Circular is in compliance with the law and whether the freedom of labour can be restricted by Circulars. Although the circular covers both public and private sector employees, the issue is handled in terms of healthcare professionals only working in the private sector subject to the Labor Law Numbered 4857 in our study[2].

2. CONTENT OF THE CIRCULAR

In the Circular dated 27.03.2020 and numbered 54718026 issued by the General Directorate of Health Services of the Ministry of Health, it has become necessary to make arrangements regarding leave of employment of these personnel working in health institutions because the continuity of employment of health personnel in health institutions with their current status is important for the sustainability of health services within the scope of the fight against the coronavirus disease (COVID-19) epidemic in our country at the meeting of Capacity Evaluation Commission dated 27.03.2020 and numbered 2020/11 which entered into force with the approval of the competent authority dated 27.03.2020 and numbered 1049 with the aim

[1]The circular can be accessed from the link below:
https://dosyamerkez.saglik.gov.tr/Eklenti/36992,covid-19-salgini-suresince-personel-ayrilislaripdf.pdf?0&_tag1=414F7E70F2963685A3903E3529587A84645DE24E

[2] For the study in which the Circular Numbered 60438742-929-3137 and dated 27.10.2020, which was published by the Ministry of Health regarding the health personnel working in the public sector, is evaluated in terms of Constitutional Law, see. Kemal Gözler, Is the Resignation Ban on Healthcare Personnel Legal?, https://www.anayasa.gen.tr/istifa-yasagi.htm (10.12.2020)

of ensuring the sustainability of health services in an effective and efficient manner within the scope of the COVID-19 epidemic.

It was stated, "I kindly request that related institutions be informed about the issue and required actions be taken in order to combat the pandemic effectively and to prevent disruption of the service."

After this Circular, the Circular [3] Numbered 60438742-929 and dated 30.03.2020 issued by the General Directorate of Management Services of the Ministry of Health was published, and it was stated that it was aimed to eliminate some hesitations regarding the implementation of the Circular dated 27.03.2020.

In Article 7 of this Circular, it is stated that "the request of the employee who wants to leave their duties in this process for whatever reason will not be accepted."

In the aforementioned Circular, it is also regulated in which special circumstances the personnel can leave the job.

3. DURATION AND SCOPE OF THE CIRCULAR

3.1. Duration

As it is seen in the circular, it is stated that the regulation regarding prevention of health personnel's leaving their job will be implemented for 3 months after the relevant decision is taken. Since it is stated in the circular that the said decision was taken on 27.03.2020, the implementation date of the circular will be 27.03.2020 – 27.06.2020.

However, it was stated that the Circular dated 07.06.2020 and numbered 14500235-403.99 of the General Directorate of Health Services of the Ministry of Health and the Circular dated 27.03.2020 were annulled. In this regard, it should be noted that the effective date of the Circular, which is the subject of the study, was 27.03.2020-07.06.2020.

3.2. Scope of the Circular

In the circular, it is stated that health personnel working in all public and private health institutions and organizations are included in the scope. Therefore, it is clear that the decision taken covers all health units, both private and public.

It is specified in the circular that the persons covered by the restriction are health personnel. Although people that firstly comes to mind when health personnel is mentioned are physicians, nurses and pharmacists, it is also necessary to examine whether the concept in question is limited to these people who directly provide health services, or whether this concept is wider.

In the Official Gazette dated 22.05.2014, the Regulation on the Job Definitions of Healthcare Professionals and Other Professionals Working in Health Services was published[4]. In the 4th article of the regulation titled definitions;

It is stated that expression "healthcare professionals" refers to "physicians, dentists, pharmacists, nurses, midwives and opticians and other professionals defined in the Additional Article 13 of the Law numbered 1219, and expression "other professionals working in health services" refers to other professionals who have a unique duty within the framework of health service provision and work in this field although they are not a healthcare professional."

Members of the profession included in Annex- Article 13 of Law Numbered 1219 on the Mode of Execution of Medicine and Medical Sciences [5] are as follows:

Clinical psychologist, physiotherapist, audiologist, dietitian, speech and language therapist, podologist, health physicist, anesthesia technician, medical laboratory and pathology technician, dental prosthesis technician, medical prosthesis and orthosis technician, operating room technician, forensic medicine technician, audiometry technician, dialysis technician, physiotherapy technician, perfusionist, pharmacy technician, occupational therapist (Ergotherapist), occupational and occupational technician (Ergotherapy

[3] The circular can be accessed from the link below:
https://ohsad.org/wp-content/uploads/2020/03/personel-ayrilis-islemleri.pdf
[4] Official Gazette dated 22.05.2014 and numbered 29007.
[5] Official Gazette dated 14.04.1928 and numbered 863.

technician), electroneurophysiology technician, mammography technician, emergency medicine technician, nurse assistant, midwife assistant, health care technician.

In the annexes 1 and 2 of the regulation, job descriptions of health service members and other professionals are included. Other professionals who are employed in health services, although they are not healthcare professionals, are as follows:

Psychologist, biologist, child development specialist, social worker / social service expert, health educator / medical technologist, health administrator, environmental health technician, elder care technician / home care technician, medical secretary, biomedical device technician.

Since it is not clearly defined in the Circular which personnel are within the scope of the ban on leaving work, it will be accepted that all the health personnel mentioned above should be evaluated within the scope of this Circular. However, it is not clear what kind of benefit it would be to prevent health personnel such as pharmacy technicians and dental prosthesis technicians from leaving their jobs during the Covid epidemic period. Undoubtedly, it is clear that the Circular does not mean these employees. However, the fact that the employees within the scope of the ban are not clearly stated in the Circular will mean a significant violation of rights for these employees, and the Circular may also be cancelled in terms of the implementation of the administrative action (scope/person).

4. EVALUATION OF WHETHER THE CIRCULAR IS LAWFUL

4.1. Status of Circular in the Hierarchy of Norms

In order to determine the sanction power of the Circular published by the Ministry of Health, first of all, it is necessary to determine the status of the Circular in the hierarchy of legal sources.

Considering the power of influence and order of importance, legal sources can be listed as follows from high to low:

(1) Constitution; (2) International conventions on fundamental rights and freedoms; (3) Laws / Presidential Decrees (in times of emergency) / international conventions; (4) Presidential Decrees; (5) Regulations; (6) other regulatory actions[6]. Circulars are also among the anonymous regulatory actions of the administration[7].

In order for the circular to be in accordance with the law, it must first be in conformity with the constitution and the underlying law. In the Labor Law Numberd 4857 and the Turkish Code of Obligations Numbered 6098, there is no regulation regarding the restriction of the employees' right to resign (not being able to use this right).

For this reason, it must first be determined whether this regulation complies with the Constitution in order to determine whether the published Circular is lawful.

4.2. Constitutional Regulations on the Right to Work

It is necessary to examine the basic concepts of the Constitution regarding the freedom of labour and the legal conditions related to restriction of this right. It is necessary to examine the basic concepts of the Constitution regarding the freedom of labour and the legal conditions related to the restriction of this right.

[6] Turgut Tan, Administrative Law, 9th Edition, Ankara: Turhan Bookstore, 2020, p. 76 – 77; M. Fikret Gezgin / H. İbrahim Sarıoğlu, Basic Concepts of Law, 4th Edition, Tayfun Medya, Ankara: 2013, p. 102 – 105; Erdal Kuluçlu, Hierarchy of Norms in the Turkish Legal System and Its Effects on the Audit of the Court of Accounts, Journal of the Court of Accounts, P. 71, Y. Ekim – December 2008, p. 4; Erdoğan Teziç, Constitutional Law, 24th Facsimile Edition , Istanbul: Beta, 2017, p. 93 – 98.

[7] Kemal Gözler, Turkish Constitutional Law, 3rd Edition, Bursa: Ekin, 2020, p. 984; In the decision dated 08.03.2013 of the 12th Chamber of the Council of State, it is stated as follows: “It is undoubted that lower-level norms take effect from higher-level norms in the legal order, which is a hierarchical norms system. At the top of the hierarchy of norms, there are universal legal principles and the Constitution, and subsequent laws take effect from the Constitution, statutes take effect from law, and regulations take effect from laws and statutes. It is not possible for a norm to put forward a provision that is contrary to or alters a norm that is higher than itself and forms its basis.”and this refer that lower norms cannot be contrary to higher norms. n the decision of the Constitutional Court dated 21.01.2021 and numbered 2010/4133 Docket and 2013/1367 Decision, “As a natural consequence of the hierarchy of norms defined indirectly in Articles 137 and 138 of the Constitution, the rule at the top is binding for all the rules below this rule and every lower rule must comply with the upper rules. Article 11 of the Constitution, titled "Binding and supremacy of the Constitution", which states that "Constitutional provisions are the fundamental rules of law that bind the legislative, executive and judicial organs, administrative authorities and other organizations and individuals.", clearly defines that the Constitution is at the top of the hierarchy in question. It is stated that the laws within the aforementioned hierarchical structure are abided because they are believed to be in conformity with the constitution. Likewise, in democratic societies, the belief that the decisions of the bodies exercising public power are in conformity with the constitution, which is at the top of the hierarchy of norms, legitimizes the decisions of those using public power. This legitimacy must constantly be present in all actions and decisions of the bodies that use public power, and thus the hierarchy of norms is emphasized. 2020/32949 B. (Decision on Kadri Enis Berberoğlu), Lexpera Jurisprudence Bank.

The article 49 of the Constitution refers that;

"Working is everyone's right and duty. The state takes the necessary measures to increase the living standards of the employees, to protect the employees and the unemployed in order to improve the working life, to support working, to create an economic environment suitable for the prevention of unemployment and to ensure work peace[8]."

This regulation in Article 49 positions working as a right and a duty. The article 18 of the Constitution states, "No one can be forced to work. Drudgery is prohibited".

Then, as a result of the evaluation of both provisions together, it is accepted that working is a constitutional right and at the same time, it is constitutionally guaranteed that no one can be forced to work.

4.3. Limits of Interventions to the Right to Work (Not to Work)

As stated above, working is a constitutional right. In addition to the right to work, non-working is also accepted as a basic human right. Because, the provision "no one can be forced to work." in Article 18 confirms that non-working is a constitutional right.

As mentioned above, there is no regulation in the Labor Law and the Turkish Law of Obligations regarding the restriction of the freedom of labour. However, it should be noted that the regulations regarding the restriction of the right to work, which is among the fundamental rights and freedoms, are included in the Constitution[9].

The Second Part of the Constitution is titled Fundamental Rights and Duties. In this part;

Article 12 states that "everyone has fundamental rights and freedoms that are personal, inviolable, inalienable and indispensable. Fundamental rights and freedoms also include the duties and responsibilities of a person towards society, his family and other persons.

The 13th article states, "Fundamental rights and freedoms can only be limited by law, without affecting their essence, depending on the reasons specified in the relevant articles of the Constitution. These restrictions cannot be contrary to the word and spirit of the Constitution, the requirements of the democratic social order and the secular Republic, and the principle of proportionality[10].

In line with the regulation in Article 13 of the Constitution, we can specify the conditions for limiting fundamental rights and freedoms as follows:

a. Restriction should only be made pursuant to related law.

b. Restriction must be in accordance with the word and spirit of the constitution.

c. Restriction should not be contrary to the democratic social order and the requirements of the secular Republic.

d. Restriction should not contradict the principle of proportionality.

This regulation shows that restrictions on fundamental rights and freedoms can only be made in the manner specified in the Constitution and in accordance with the law.

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[8] For the evaluations regarding the views of the Constitutional Court referring "the state is not obliged to employ everyone, and the state is obliged to take the necessary measures to facilitate finding a job by establishing adequate organizations within the extent of its possibilities." include <timidity> in claiming the right, see Kaboglu – Sales, p. 215.

[9]The judgement of the Court of First Instance was approved, which refers that restrictions to be made on the right to work should be in accordance with the constitution, and is based on the reason, " The right to work, which is among the fundamental rights and freedoms, is guaranteed by Articles 48 and 49 of the Constitution, and in Article 13 of the Constitution, fundemental rights and freedoms can only be limited by law, without affecting their essence, only depending on the reasons specified in the relevant articles of the Constitution, and in Article 6 of the Constitution, as a natural consequence of the rule of law, it is stipulated that no person or body can exercise a State authority that does not result from the Constitution. Against this regulation, which is included in the Constitution, any administration's intervention in the right to work, although not authorized by law, will result in the use of a State authority that does not result from the Constitution." 10th Chamber of Council of State, dated 19.02.2016, numbered 2014/5003 Docket, 2016/898 Decision, Lexpera Jurisprudence Bank; In the decision of Ankara District Administrative Court, 12th Administrative Action Department dated 05.02.2020, It is stated "It is not possible to establish the action that is the subject of the lawsuit regarding the limitation of the right to work, which is guaranteed by Articles 48 and 49 of the Constitution, merely based on opinion. The establishment of an administrative action that will limit the right to work based on concrete information, documents and determinations, is a natural result of the understanding of a law-based state in which fundamental rights and freedoms are guaranteed", numbered 2020/43 Docket, 2020/2020/345 Decision, Lexpera Jurisprudence Bank.

[10] For more information on the limitation of fundamental rights and freedoms, see. Ergun Özbudun, Turkish Constitutional Law, 20th Edition, Ankara: Yetkin, 2020, p. 109 – 113; İbrahim Kaboğlu – Eric Sales, Turkish Constitutional Law in the Pendulum of Coup and Democracy, Istanbul: Legal, 2018, p. 167 et al; Gözler, p. 307 et al.

In addition to the 13th article of the Constitution, there is a special regulation in the 15th article, which we can also call the extraordinary period regulation.

The article 15 of the Constitution states that "in cases of war, mobilization (…) or in times of emergency, the exercise of fundamental rights and freedoms may be suspended partially or completely or measures contrary to the guarantees set forth in the Constitution may be taken for them considering the related circumstances, provided that obligations arising from international law are not violated.

In the cases specified in the first paragraph, it is stated "Except for the deaths caused by actions in accordance with the law of war (…), a person's right to life and the integrity of his material and spiritual existence cannot be violated, no one can be forced to reveal their religion, conscience, thoughts and convictions and cannot be accused of them; crimes and punishments cannot be carried out retroactively; no one can be considered guilty until his guilt is determined by a court decision."

As can be seen, there are legitimate ways to estop fundamental rights and freedoms partially or completely, or to take measures contrary to the guarantees set forth in the Constitution. These are the states of war, mobilization or state of emergency.

The reasons for mobilization are included in Article 10 of the Mobilization and State of War Law Numbered 2941, and epidemic or dangerous diseases are not included among these reasons.

The state of emergency is regulated in Article 119 of the Constitution. According to this regulation, "The President may declare a state of emergency for a period not exceeding six months in the whole or in a region of the country in the event of war, the emergence of a situation necessitating war, mobilization, uprising, a strong and active uprising against the homeland or the Republic, the spread of violent acts that endanger the indivisibility of the country and the nation internally or externally, the emergence of widespread acts of violence aimed at destroying the constitutional order or fundamental rights and freedoms, serious disruption of public order due to acts of violence, natural disasters or dangerous epidemics or severe economic depression.

Accordingly, it is understood that a second way of restricting fundamental rights and freedoms other than the restriction to be made by law is to declare a state of emergency.

Another regulation on the subject is included in the second paragraph of Article 18 of the Constitution. In this paragraph, "employment within the period of conviction or detention, the forms and conditions of which shall be regulated by law; services to be requested from citizens in cases of emergency; physical and intellectual working, which is considered a civic responsibility in the fields required by the country's needs, is not considered forced labor. It would be appropriate to dwell on *"body and intellectual work, which is a civic duty in the fields necessitated by the needs of the country"* in this regulation.

From this point of view, although it is a general rule that no one can be forced to work, it is seen that the exception to this is also included in the Constitution and it is also regulated in the Constitution in which cases people can be asked to work according to the Constitution. Situations that cannot be called forced labor are specified as "services to be requested from citizens in emergency situations" and "physical and intellectual work in the nature of civic duty in areas required by the needs of the country." [11]

However, it must be noted that it should be regulated by law how working in the fields required by the country's needs should be even in these cases.

As can be seen, when we take a look at the provisions of the Constitution, it is regulated as a rule that no one can be forced to work, but in extraordinary situations, the state can demand that they continue working. When all these regulations are evaluated together, it is clear that the right to work, which is regulated as a social and economic right in the Constitution, can only be limited by law or a related decision can be taken by the President by declaring a state of emergency. Restriction that does not arise from the form and conditions stipulated by the Constitution and is made by the Circular is unconstitutional. Therefore, the fact that the constitutional right to work and not to work is restricted by the circular issued by the Ministry of Health constitutes a clear violation of the law.

[11] For the decisions of the Constitutional Court that the compulsory service obligation for doctors and specialist doctors is not within the scope of the prohibition of forced labor, see AYM, 16.12.2010, 2007/24 E., 2010/113 K.; AYM, 08.11.2011, 2010/113 E., 2011/164 K., Lexpera Jurisprudence Bank.

On the other hand, pursuant to article 2/1-a of the Administrative Trial Procedure Law Numbered 2577, the actions taken by the administration must comply with the law in terms of authority, form, reason, subject and purpose. Circulars, which are accepted as a general regulatory action, must be based on a law according to the purpose of their issuance, as well as in compliance with the law[12]. The fact that the legal basis of the regulations regarding the restrictions on leaving the job is not specified in the Circular, which is examined, also makes the Circular unlawful.

4. EFFECTS OF THE CIRCULAR IN TERMS OF LABOR LAW

It has been determined above that the Circular examined is unlawful. We will need to handle the effects of the said illegality in terms of the employee-employer relationship. First of all, it should be noted that the constitution is at the forefront of the legal bases of labor law. [13]

In the period when the circular was in effect, although the employee (health personnel) wanted to terminate the employment contract with righteous cause, this demand might be refused in line with Article 24 of the Labor Law Numbered 4857. In this case, the provisions of the Circular will not be applied for employees who ignored the refusal decision and did not continue their work, and these employees will be entitled to severance pay if they have legal conditions.

In this case, another possibility is that the employee cannot leave the job due to the Circular although there are conditions for leaving the job for righteous cause, and the employer has a justifiable reason for termination after the Circular expires. In this case, while the employee would be entitled to severance pay on the date of the first request, he could not leave the job on the grounds of the Circular, but later the employment contract was terminated by the employer for righteous cause.

In our opinion, in this case, the judicial decisions [14] applied to employees who continue to work in the same workplace after being entitled to retirement can also be applied here by analogy. In this case, the employee should be entitled to severance pay if there are justified termination conditions for the employee at the time the employee's first will for termination is used.

If the employer changes the working conditions of the employee in accordance with the Labor Law Numbered 4857 and the workplace is changed in this context, the employment contracts of the employees who do not comply with this decision of the employer due to the Circular may be terminated by the employer with righteous cause[15]. It should be noted that in this case, the employee does not follow the instructions of the employer due to the justified trust he or she has in the Circular published by the Ministry. For this reason, the employee will be able to take legal action against the Ministry to compensate for the damage he or she has suffered.

In our opinion, the most important consequences of the Circular appear in the case of physical damage or death of health personnel due to virus contamination that occurred during its validity period. In this case, the employee will be deemed to have been exposed to a work accident or occupational disease[16]. However, it is possible for the employee to file a lawsuit for pecuniary and non-pecuniary damages against the Ministry of Health on the grounds that he or she was exposed to the virus during the period when his or her right to resign was denied and therefore suffered bodily harm. In case of death of the employee, this right will be inherited by his or her legal heirs.

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[12] Nuri Çelik / Nurşen Caniklioğlu / Talat Canbolat, Labor Law Lessons, Revised 32nd Edition, Istanbul: Beta, 2019, p. 32; Hamdi Mollamahmutoğlu / Muhittin Astarlı / Ulaş Baysal, Business Law Textbook, C.I, Revised 3rd Edition, Ankara: Lykeion, 2019, p. 8; Kenan Tunçomağ / Tankut Centel, Principles of Labor Law, 9th Edition, Istanbul: Beta, 2019, p. 24; Sarper Süzek, Labor Law, Revised 18th Edition, Beta: Istanbul, 2019, p. 51-54.

[13] 22nd civil chamber of the Supreme Court, date 22.01.2013, number 2012/10297 E., 2013/224 K., Kazancı Jurisprudence Bank (10.12.2020).

[14] For explanations regarding the termination of the contract by the employer for just cause, see. Mollamahmutoğlu / Astalı / Baysal, p. 235-246; Tunçomağ / Centel, p. 226 – 34; Süzek, p. 667 – 680; Ömer Ekmekçi / Esra Yiğit, Individual Labor Law Lessons, Istanbul: Oniki Levha Publishing, 682 – 707; Celik / Canikliogluo / Canbolat, 594 – 628.

[15] For explanations regarding the termination of the contract by the employer for just cause, see. Mollamahmutoğlu / Astalı / Baysal, p. 235-246; Tunçomağ / Centel, p. 226 – 34; Süzek, p. 667 – 680; Ömer Ekmekçi / Esra Yiğit, Individual Labor Law Lessons, Istanbul: Oniki Levha Publishing, 682 – 707; Celik / Canikliogluo / Canbolat, 594 – 628.

[16] For the employer's obligation to take occupational health and safety measures, see. Süzek, p. 396 et al.; Ekmekçi / Yigit, p. 332; For detailed information on work accidents and occupational diseases, see Ali Güzel / Ali Rıza Okur / Nurşen Caniklioğlu, Social Security Law, Revised 18th Edition, Istanbul: Beta, 2020, p. 361, 382-383; İlhan Ulusan, The Employer's Obligation to Consider the Employee Especially in Terms of Obligations and Labor Law, and his/her Legal Responsibility, Istanbul: Kazancı Law Publishing, 1990, p. 71; Zübeyde Başboğa Şahbaz, Principles Regarding the Legal Liability of the Employer due to Work Accident and Occupational Disease and Calculation of Material Damage, İstanbul: Beta, 2010, 12; Mustafa Çenberci, Commentary on the Social Security Law, New Press, Ankara: Olgaç Printing House, 1985, p. 123.

5. CONCLUSION

Due to the rapid increase in the number of patients during the Covid-19 epidemic and the insufficient number of health personnel to respond to this increase, the General Directorate of Health Services of the Ministry of Health published the Circular dated 27.03.2020 and numbered 54718026, it was decided that any health personnel working in all public and private health institutions and organizations should not be allowed to leave their duties / jobs within the scope of the pandemic process for 3 months until a second announcement. In the aforementioned Circular, on which law the decision is based and its legal justifications are not indicated.

The right to work and the right not to work (the right to leave job) are regarded among the fundamental rights and freedoms in the Constitution of the Republic of Turkey. Accordingly, restrictions on rights and freedoms, which are based on the constitution, must be made within the framework of the principles set out in Article 13 of the constitution and by law. Apart from this, restrictions to be made due to the epidemic may also arise from the application of the state of emergency regulated in Article 119 of the Constitution.

The fact that the Circular including the restrictions on the right to work was not taken by the Law or the State of Emergency decision means that the Circular is unconstitutional. During the period in which the circular was in force, the provisions of the Circular, which is contrary to the Constitution, will not be applied to employees who terminated their employment contract for just cause and these employees will be able to receive severance pay.

In the event that the employee cannot leave the job due to the Circular, although there are conditions for leaving the job for just cause, and the employer has a justifiable reason for termination after the Circular expires, he or she will be entitled to severance pay over the employee's severance period until the date on which he or she expresses his or her first will for termination and cannot implement it due to the Circular and his or her wages on this date.

In the event that the employee or employer incurs a loss due to their trust in the Circular, those concerned may take legal action against the Ministry in order to compensate for the damage they have suffered.

In the event that the health personnel suffer a bodily injury due to the virus within the effective period of the circular, it will be deemed that these persons have been exposed to a work accident or occupational disease. However, it is possible for the employee to file a lawsuit for pecuniary and non-pecuniary damages against the Ministry of Health on the grounds that he or she was exposed to the virus during the period when his or her right to resign was denied and therefore suffered bodily injury. In case of death of the employee, this right will be inherited by his or her legal heirs.

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