

Türkiye’deki İşe İade Davalarının Hukuki Sonuçları

Legal Results in Return to Work Cases Türkiye

ÖZET

İşverenin haklı bir sebep göstermeksizin işçinin sözleşmesini feshetmesi halinde, işçinin işe iade talebinde bulunma hakkı bulunmaktadır. İşe iade, çalışanın eski işine dönmesine, aynı çalışma koşullarını sürdürmesine ve aynı işyerinde çalışmasına olanak tanıyan hukuki bir çözümdür. Eski durumuna döndürme talebinin ayrı bir yasal işlemde yapılması gerektiğinin dikkate alınması önemlidir; Çalışanın sahip olabileceği diğer talep veya haklarla birleştirilemez. Mahkemenin işçi lehine karar vermesi halinde işverenin yasal olarak işçiyi işe iade etmesi gerekmektedir. Bu işe iade, sanki fesih hiç gerçekleşmemiş gibi iş sözleşmesini etkin bir şekilde devam ettirir. Ancak işverenin mahkeme kararına uymaması ve işçiyi tekrar iş almaması halinde ciddi tazminat yükümlülükleriyle karşı karşıya kalabilecek. Bu çalışma, işe iade davalarıyla ilgili pratik zorluklara ve hukuki belirsizliklere değinmektedir. Çalışanların işe iade talebinde bulunurken karşılaştıkları usule ilişkin zorlukları araştırıyor ve bu tür davaların iş hukuku üzerindeki daha geniş etkilerini inceliyor. Ayrıca çalışma, hukuk doktrini içerisindeki tartışmalı konulara, özellikle de akademisyenler ve uygulayıcılar tarafından tartışılan konulara değinmektedir. Yüksek Mahkeme içtihatlarının analizi yoluyla bu çalışma, suçluların iadesi haklarının uygulanmasını şekillendiren içtihat eğilimlerini ve hukuki yorumları vurgulayarak mevcut hukuki duruma kapsamlı bir genel bakış sunmaktadır.

Anahtar Kelimeler: İş Sözleşmesi, İşe İade Davası, İşveren, Yargıtay Kararı

ABSTRACT

If an employer terminates an employee's contract without providing a legitimate reason, the employee has the right to seek reinstatement. Reinstatement is a legal remedy that enables the employee to return to their previous position, maintaining the same conditions of employment and working at the same workplace. It is important to note that the request for reinstatement must be filed in a separate legal proceeding; it cannot be combined with other claims or entitlements that the employee may have. In cases where the court rules in favor of the employee, the employer is legally obligated to reinstate the employee. This reinstatement effectively resumes the employment contract as if the termination had never occurred. However, if the employer fails to comply with the court's ruling and does not rehire the employee, they may be subjected to significant compensation liabilities. This study delves into the practical challenges and legal ambiguities associated with reinstatement cases. It explores the procedural difficulties employees face when seeking reinstatement and examines the broader implications of such cases on employment law. Additionally, the study addresses controversial issues within legal doctrine, particularly those debated by scholars and practitioners. Through an analysis of Supreme Court case law, this study provides a comprehensive overview of the current legal landscape, highlighting the jurisprudential trends and judicial interpretations that shape the enforcement of reinstatement rights.

Keywords: Labor Contract, Reemployment Lawsuit, Employer, Supreme Court Decision

INTRODUCTION

Historically, evolving experiences have necessitated a reassessment of the legal system underpinning liberalism, driven by both social and economic transformations and the imperative to address issues within the private legal framework in conjunction with the concept of the welfare state. This reassessment reflects the inherent need of individuals to secure their rights not only against the state but also within their interpersonal relationships to protect themselves from unlawful and unfair practices. Consequently, this evolving understanding has given rise to distinct legal branches such as labor law, social security law, and consumer protection law.

In alignment with this evolving perspective, specialized courts have been established, and procedural rules have been modified to better address these specific legal areas. One significant outcome of this evolution is the development of business trial procedures, which have been structured independently from traditional legal proceedings. This specialization ensures more effective adjudication of cases within these branches, reflecting a legal system that adapts to the nuanced needs of a modern, complex society.

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One of the primary objectives of labor law is to maintain the relationship between the two fundamental factors in the working life—employee and employer—by protecting employee rights (Çelik, Canikoğlu, & Canbolat, 2018). Job security is defined as an institution that ensures the employee's job stability and restricts the employer's ability to terminate employment, thereby benefiting the employee through one-sided rights. It can also be described as a mechanism for enforcing the right to work, which is a constitutional right (Kar, 2009; Centel, December 2009).

However, these definitions primarily address job security in the context of protecting the employee from termination. In a broader sense, job security encompasses all provisions that regulate the continuation of the employment relationship, extending beyond those that merely ensure the continuity of employment from the point of hiring (Akyiğit, 2007)

LEGAL NATURE OF REEMPLOYMENT LAWSUITS

Obligation to Apply for "Mediation" as a Condition of Litigation

The mediation method, practiced in the United States and Europe for over 40 years, is recognized as an effective dispute resolution technique. This pre-court procedure allows parties to resolve issues that are or could become the subject of a lawsuit through mutual negotiation facilitated by a mediator. Compared to traditional litigation, mediation offers a relatively rapid process and often results in more effective solutions.

In line with global developments, mediation became a subject of academic discourse and research in the late 1990s, leading to the publication of numerous scientific articles. This scholarly attention reflects the increasing recognition of mediation's potential to provide efficient and amicable resolutions to conflicts. A scientific commission was established to draft legislation on mediation after thorough academic discussions and studies reached the desired maturity. The commission, after extensive examination of global examples, presented its findings, leading to the formulation of the "Law on Mediation in Legal Disputes Bill." This bill was submitted to the Turkish Grand National Assembly on June 3, 2008, and was subsequently adopted on June 7, 2012. Furthermore, Law No. 7036 was published in the Official Gazette on October 25, 2017, with its acceptance date recorded as October 12, 2018, and it came into effect on January 1, 2018.

Application to the Labor Court

If it is determined that the employer has terminated the employment contract invalidly, the issue of the employee's reinstatement arises. In such cases, the employee can request reinstatement, during which the invalidity of the termination is established. This includes compensation for up to four months' wages for the period the employee was unemployed and job security compensation if the employee is not rehired. The employee, however, is not entitled to claim both four months' wages and compensation for not being rehired simultaneously. In reinstatement cases, the claimant is the employee whose employment contract was allegedly terminated invalidly.

Procedural Procedure and Burden of Proof

It is the judge's obligation to ascertain the true nature of the contract that underpins the relationship between the parties. The statements or agreements of the parties are not binding on the judge. The responsibility to characterize the concrete events and circumstances rests solely with the judge. In the event of an appeal, the Supreme Court is required to render its decision within one month (Tuñomağ & Centel, 2018). The burden of proof lies with the employer, who must demonstrate that the termination of the contract was based on valid reasons (Aktay, Arıcı, & Kaplan, 2013)

According to Article 20 of the Labor Law, if an employment contract is terminated for an invalid reason, the employee must file a lawsuit with the labor court within one month. This one-month period begins on the date the employer notifies the employee of the contract termination. The employer, once sued, is required to respond to the lawsuit within seven days of receiving the notification of the employee's petition. Both parties must attach all relevant documents and evidence to their petitions. The court schedules the hearing for the earliest possible date (Akyiğit, 2008)

Adjudication of Reemployment Case in the Court of First Instance

In reinstatement cases, employment courts have the authority to issue procedural decisions regarding lack of authorization, inaction, or the treatment of the case as if it had not been filed (Uluç, 2009). The employment tribunal will dismiss the case if it finds the worker's claims unsubstantiated; if the claims are substantiated, the court will rule in favor of the worker. If the worker is reinstated while the case is ongoing, the case will become moot (Ertürk, 2009). The court calculates and determines the decision fee based on the specifics of the case (Günay, 2015).

Burden of Proof in Reemployment Case and Results of the Case

The timeframe for litigation is stipulated in the initial provision of Article 20 of the Labor Law, which grants employees whose contracts are terminated without cause or under disputed circumstances the right to initiate legal proceedings within one month of receiving notice of termination.

The commencement of the litigation period is contingent upon the manifestation of intent by the genuine employer (Özdemir, 2014). Notably, the notice of termination must be directly addressed to the employee, and the countdown for initiating legal action commences upon the notification entering the employee's legal purview (Süzek, 2018)

Burden of Proof Proof of Conditions According to the Labor Law No. 4857

The central assessment of a case hinges upon the discernment of whether the conditions delineated in Article 18 of the Labor Law are substantively present. According to a prevailing viewpoint in legal doctrine, this entails the presence of a labor contract, employment within a protected domain against termination, receipt of a termination notice from the employer, and the absence of a valid or any justifiable reason for termination. It is incumbent upon the worker to assert and demonstrate the absence of such reasons.

REEMPLOYMENT LITIGATION RESULTS

Reemployment Case Decision

Article 21 of the Labor Law delineates the repercussions of terminating an employment contract on invalid grounds. If an employer terminates an employee's contract without valid cause or if the reason provided is deemed invalid by a specialized judge or the court, the employer is obliged to reinstate the employee within one month. Final court decisions in such cases are classified into three categories based on procedural methodology, substantive considerations, and whether the case is contentious (Postacıoğlu, 2015; Pekcanitez, Atalay, & Özekes, 2018). In a reemployment lawsuit initiated by the employee, the court may render decisions concerning the validity of the termination, dismissal of the case, or finding the termination invalid and ordering the reinstatement of the employee, following a thorough assessment of the merits. If, upon examination, the employee's claims are deemed unsubstantiated, the lawsuit will be dismissed, affirming that the employer terminated the employment contract lawfully and for valid reasons. This judicial determination legally validates the employer's termination of the contract (Uluç, 2009).

In such circumstances, should the employee fail to secure the job security protections afforded by law, the recourse available is to file a lawsuit with the labor court, seeking severance pay and any outstanding wages owed (Akyigit, 2008). If the employee's claims are substantiated, the petition for reinstatement will be granted. Essentially, as the onus of proof rests with the employer, petitions for reinstatement prevail in cases where the employer fails to substantiate the validity and justification of the termination.

Decision Nature of the Reemployment Case

A potential court decision regarding reinstatement, along with the provision of a maximum of four months' worth of wages until reemployment is secured, bears resemblance to the principles of performance within civil law. Conversely, the clause pertaining to job security compensation functions as a determinative clause, as stipulated in the initial paragraph of Article 21, wherein the phrase "the employer has to start the worker" imposes an obligation on the employer. Given that the specific relief sought in the case is reinstatement, the reemployment case is categorized as an action case (Özkeleş)

Implementation of the Court's Decision

Pursuant to Section 25 of the Labor Code, as mandated by the notification of the final court or special arbitrator decision, the employee is obligated to initiate work proceedings with the employer within ten working days, as outlined in the fifth paragraph of the aforementioned article. Failure to adhere to this requirement results in the employer's termination of the employment contract being deemed valid, thereby necessitating the employee to bear the legal consequences of said termination. Even in instances where the employee, court, or private arbitrator deems the termination of the employment contract invalid, the employee must still seek reinstatement from the employer. Failure to comply with this requirement may result in the final decision not being executed as prescribed. However, if the employee remains unemployed for a period exceeding four months, they risk forfeiting any entitlement to non-employment compensation.

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