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Payment calculation method for journalist severance has changed

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Introduction

Law No. 5953 on Arrangement of Relations Between Employers and Employees in the Field of Press (Press Labour Law) sets out the terms and conditions of employment of journalists. Article 6 of the Press Labour Law regulates journalists' entitlement to severance payment and termination of their employment contracts by employers.

According to the former wording of the referred article, journalists with at least five years of professional service were entitled to severance payment. Severance entitlement was determined from profession commencement, and the payment was calculated based on the journalist's most recent monthly gross salary for each service year. However, a portion of less than six months of annual service was not considered.

Recently, the Constitutional Court examined this five-year service requirement and the avoidance of a portion less than six months' annual service in calculating the severance payment in respect of their compliance with the Turkish Constitution.

Five-year service requirement

In summary, Ankara 21st Labour Court applied to the Constitutional Court by arguing that the five-year service requirement fails to ensure an adequate protection compared to the other labour laws in Turkey, and journalists' right to severance payment must also be secured. Pursuant to this objection, the Constitutional Court stressed that article 10 of the Turkish Constitution stipulates equality in the eyes of law for all who have the same legal status. This principle aims to ensure those who have the same legal status to be subject to the same legal treatment and to avoid any kind of discrimination or privilege. Any different treatments must rely on objective and reasonable grounds and be proportionate.

That being the case, although severance entitlement is regulated differently under the Turkish Labour Act No. 4857 (TLA), which deems one year of service sufficient for eligibility to severance payment and the Press Labour Law, which seeks five years of service for such eligibility, all employees working under an employment contract should be deemed comparable. Therefore, while stressing that there may be certain favourable rules about the salaries and other benefits for journalists who have a crucial role in sustaining democratic society, the Constitutional Court ruled that there is an unfair different treatment between the journalists who are subject to the Press Labour Law and the employees who are subject to the TLA.

The TLA provides a calculation method that considers all services performed at a workplace of the same employer together and the Press Labour Law initiates the severance period as of the commencement of professional service by merging services at different employers without even setting a severance cap. Despite this, this advantage does not change the fact that the Press Labour Law does not rely on an objective or reasonable ground by setting the severance requirement as five-years of professional service to the detriment of journalists.

Furthermore, the Constitutional Court emphasised that press workers who become eligible to severance by completing five years of professional service and liquidate the former employment by receiving severance payment shall face a clear unbalance to their detriment with an extreme and unproportionate burden. The severance payment shall be calculated once again over the five-year service for the services at the workplaces in scope of the Press Labour Law. Therefore, the five-year service requirement is deemed against the principle of equality in scope of the right of property.

Less than six months annual service

As mentioned above, severance payment is calculated as one month's salary for each service year over the journalist's most recent monthly gross salary, and partial years are subject to pro-rate calculation. That being the case, the former wording of the Press Labour Law regulated that a portion less than six month's annual service would not be taken into account.

Once again, the Constitutional Court ruled that the TLA, which is applicable to comparable employees, does not contain such a provision, and instead considers the entire service duration in the severance payment calculation. In this regard, there is no objective or reasonable ground for not including the service periods less than a certain duration in the calculation of severance entitlements of press workers. The Constitutional Court also deemed this rule in breach of the principle of equality in scope of the right of property.

Comment

In light of the above, the Constitutional Court decided to cancel the provisions in the Press Labour Law as to the five-year service requirement and the avoidance of a portion less than six months' annual service in calculating the severance payment. It is noteworthy that the Constitutional Court evaluated the severance payment entitlement in scope of the right to property and aimed to ensure the principle of equality between comparable workers.

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