Харківський національний педагогічний університет імені Г.С. Сковороди (Україна)

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«Актуальні проблеми приватного та публічного права»

Матеріали IV Міжнародної науково-практичної конференції присвяченої 93-річчю з дня народження члена-кореспондента НАПрН України, академіка Міжнародної кадрової академії, Заслуженого діяча науки України, доктора юридичних наук, професора Процевського О.І.

21 травня 2022 року

м. Харків

УДК 349.2:342.727
ББК 67.305
А 43

Актуальні проблеми приватного та публічного права : матеріали IV Міжнародної науково-практичної конференції присвяченої 93-річчю з дня народження члена-кореспондента НАПрН України, академіка Міжнародної кадрової академії, Заслуженого діяча науки України, доктора юридичних наук, професора Процевського О.І. (21 травня 2022 року). – Харків, 2022. – ТОВ «Видавництво Точка», віддруковано у ТОВ «Друкарня Мадрид» через ФОП Гобельовська Л. П.– 460 с.

ISBN 978-617-7988-13-6

У матеріалах збірника представлені результати наукових досліджень вчених, присвячених актуальним проблемам приватного та публічного права.

Видання адресоване вченим, аспірантам, докторантам, викладачам закладів юридичної освіти, працівникам суду, адвокатури, органам юстиції, співробітникам Державної служби зайнятості України, практикуючим юристам, громадським діячам, профспілковим активістам, іншим особам, що цікавляться проблемами приватного та публічного права.

Матеріали конференції оприлюднені у електронному вигляді на сервері відкритого електронного архіву (репозитарію) Харківського національного педагогічного університету імені Г.С. Сковороди EKhNPUIR (електронний архів): http://dspace.hnpu.edu.ua/ та на сайті юридичного факультету: http://www.hnpu-laws.in.ua/ у розділі «Наука».

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Оргкомітет конференції не завжди поділяє думку учасників. У збірнику максимально точно збережена орфографія і пунктуація, які були запропоновані учасниками. Повну відповідальність за достовірну інформацію несуть учасники та їх наукові керівники.

The employer cannot distinguish between full-time employees and part-time employees, fixed-term employees and indefinite-term employees, unless there are substantial reasons. Unless biological reasons and reasons related to the nature of the job make it compulsory, employees cannot be treated differently in terms of concluding an employment contract, determining working conditions, applying and terminating it for reasons such as gender and pregnancy. Work of the same or equal value cannot be paid lower or higher just because of gender differences. According to Article 31 of the Trade Unions Law, the employer cannot distinguish between unionized and non-union employees. Otherwise, the employee will have to pay an indemnity not less than one year's wage.

If the employer does not treat the employees equally, contrary to the provisions of Article 5 of the Turkish Labor Law, except for union reasons, the employees may demand the rights they have been deprived of, in addition to an appropriate compensation in the amount of their wages up to 4 months (Article 5).

The Obligation To Pay The Employee For His Inventions

In some parts of the workplaces, technical work and research can be done. Employees working in such an environment can sometimes make a new invention. This invention can be an invention that accelerates production, saves materials, reduces product costs, increases product quality, and enables better evaluation of by-products. The employer is obliged to make a payment in accordance with the economic and commercial importance and value of the invention (The Article 336 of The Turkish Code of Obligations).

The details explaned above have been supported by the relevant decisions of the Supreme Court Assembly Of Civil Chambers and it’s relevant civil departments’ decisions.

УДК 349.2

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SOCIAL CHANGE IN TURKEY ON LABOR RELATIONS EFFECTS

Labor relations in Turkey began in 1838 Trade Agreement with United Kingdom. By means of this Agreement West capital entered Ottoman Emprie. However, there is no capital accumulation on the country which creates industrialization we can say that social change was not realized in this period. In 1923 after establishment of Republic, applied economy policy by which had been wanted to

create undertaker, had not been successful. In 1930 years, by means of applied "Etatism" policy, state guided economy, established enterprises, capital was accumulated. In this frame work labor mass began to be formed. So,we can assume that social change began in this period. In "Multiparty Period", which began in 1946, private enterprises grown as well, at the same time state enterprises kept on importance in the economy. After 1950, by agriculture became mechanized, emigration began from rural areas to the cities and in the cities labor supply was formed. In this case, we can say that social change gained acceleration in this period. In this frame, "labor relations" developed, especially trade unionism became widespread. In the period after 1960, social change went on growing and state enterprises and private enterprises located in the economy. Labor relations developed by means of 1961 Constitution which brought on freedoms and "274 Numbered Trade vii Unionism Act" and "275 Numbered Collective Bargaining and Strike and Lockout Act". In 1970 years for a short period (1971-1973), "labor relations" were weakened due to destroyed economy and due to restricted freedoms which were created at result of applied policy. On Septemper 12 th. 1980, military ruling came into force. After 1980 Military Coup, by means of applied neoliberal economy policy breaking-point was created in "labor relations", socioeconomic improvements were turned back. In this frame, unemployment increased, by means of privatization, deregulation of labor market which belong to globalization, number of trade union member was decreased remarkable. These negative changes which have been realized until today, still are keeping importance in "labor relations"

1-Fixed-term employment contract; 2-İndefinite term employment contract; 3-Full-time employment contract; 4-Part time employment contract; 5-Probationary employment contract.

In Article 11 of the Labor Law, it is written that the employment contracts made in writing between the employer and the employee, depending on objective conditions such as the completion of a certain job or the occurrence of a certain phenomenon, are fixed-term employment contracts.

An employment contract with a fixed term of 1 year or more, 8/II of the Labor Law. According to the article, it must be made in writing. According to Article 12 of the Labor Law, workers working with a fixed- term employment contract cannot be treated differently than a peer worker.

The termination of a fixed-term employment contract by the worker without just cause may require the employer to pay the penal clause stipulated in the contract.

If you have worked for at least more than 1 year according to a fixed-term employment contract, you will be entitled to severance pay. Fixed-term employment contracts may also be terminated by the employee and employer for justifiable reasons, without prior recognition and compensation.

Balance Term Fee in a Fixed-Term Employment Contract: In case the fixedterm employment contract is terminated by the employer before the date without giving a just cause, the worker may demand compensation from the employer in accordance with Article 408 of the Turkish Code of Obligations No. 6098 (Article 325 of the Code of Obligations No. 818). The situation has been clearly demonstrated in the decision

of the Supreme Court of Appeals General Assembly dated 25.01.2017 and numbered 2015/9-836.

In the decision of the Supreme Court of Appeals Civil General Assembly dated 28.03.2007 and numbered 2007/179, the possibility of the worker to seek a job and the amount saved due to not working will be taken into account while determining the balance time fee, and the Balance Period Fee will be reduced (discounted) shown. The penal clause in the Fixed Term Contract is valid as a rule. However, it has been shown in the decision of the 9th Civil Chamber of the Court of Cassation, dated 30.03.2017 and numbered 2017/19244 and Decision no. Employees with a fixed-term employment contract cannot benefit from job security and cannot file a reemployment lawsuit. On the other hand, if it is evaluated that the contract should be indefinite, it may be possible to file a reemployment lawsuit regardless of the word CIRCUMSTANCE written on the contract.

Despite this, it is not possible for an employee working with a fixed-term employment contract to receive notice and severance pay if the contractual time expires. Unless there is a fundamental reason for fixed-term employment contracts, more than one consecutive (chaining) cannot be made.

Unless there is a fundamental reason, an employment contract concluded more than once (chained) is considered indefinite from the beginning. Chained employment contracts based on substantial reasons maintain their fixed-term character.As shown in the decision of the 9th Civil Chamber of the Court of Cassation dated 23.10.2003 and numbered 2003/18234 and Decision 2003/17604, Private Education Institutions numbered 5580, which entered into force after being published in the Official Gazette dated 8/2/2007, dated 4/2/2007 and numbered 26434. According to the Law, a fixed-term employment contract can be concluded on a chain basis. A fixed-term service contract automatically terminates at the expiration of the term, without the need for a notice of termination, unless otherwise agreed. (Article 430 of the Turkish Code of Obligations No. 6098). If a fixed-term contract is implicitly maintained after the expiry of its term, it becomes an indefinite-term contract. (Article 430 of the Turkish Code of Obligations No. 6098)

If it is decided that the contract will end with a notice of termination and neither party has given notice of termination, the contract turns into an indefinite contract. (Article 430 of the Turkish Code of Obligations No. 6098)

Either party may terminate the service contract for more than ten years, after ten years, by observing the six-month notice period. Termination takes effect only at the beginning of the month following this period. (Article 430 of the Turkish Code of Obligations No. 6098)

In case of renewal of the Fixed-Term Employment Contract more than once, the 9th Civil Chamber of the Supreme Court of Appeals decided that the contract is for a definite period, as long as there is a substantial reason, with the decision numbered 2004/2163 and 2004/13807 dated 07.06.2004.

If there is no objective justifiable reason that requires a fixed-term employment contract in a continuous job, the contract will be considered indefinite.

It has been decided by the decision of the 9th Civil Chamber of the Court of Cassation, dated 18.02.2004 and numbered 2003/112750, Act 2004/2701, that the employment contract will be deemed to be for an indefinite period in cleaning works that are continuous and do not require special knowledge and skills. It has been shown by the decision of the 9th Civil Chamber of the Court of Cassation, dated 13.02.2002 with the basis of 2001/17364 and decision numbered 2002/2697, that it is not possible to pay notice compensation in case of termination of fixed-term employment contracts. Despite this, the evaluation that the contract should be indefinite according to the above principles should be done separately for each file. When it is considered that the writing of SPECIFIC on the contract does not mean anything due to the nature of the work, it may also be possible to receive notice indemnity.

No different action can be taken compared to the employee employed with a fixed-term employment contract and a peer employee employed with an indefinite-term employment contract.

Divisible benefits related to wages and money to be paid to a worker working with a definite employment contract are given in proportion to the time the worker has worked.

If the normal weekly working time of the worker is determined to be significantly less than the equivalent worker working with a full-time employment contract, the contract is a part-time employment contract.

A worker employed with a part-time employment contract cannot be treated differently from a full-time comparable worker simply because the employment contract is part-term, unless there is a reason justifying the discrimination.

The divisible benefits of a part-time worker in terms of wages and money are paid in proportion to the time he or she works compared to the full- time equivalent worker. What is a part-time employment contract and how is it done?

In the 13th article of the Labor Law No. 4857, the definition of partial work is made as follows.

If the normal weekly working time of the worker is determined to be significantly less than the equivalent worker working with a full-time employment contract, the contract is a part-time employment contract.

A worker employed with a part-time employment contract cannot be treated differently from a full-time comparable worker simply because the employment contract is part-term, unless there is a reason justifying the discrimination.

The divisible benefits of a part-time worker in terms of wages and money are paid in proportion to the time he or she works compared to the full- time equivalent worker.

Trial Business Dictionary Employment contracts for which a certain probationary period is foreseen are called probationary employment contracts.

Since there is no mandatory provision stating that a probationary period should be set, the party claiming the existence of a probationary period must prove it. The probationary period can be put into service contracts in "Permanent Jobs". (Labour Law Art.10.)

The parties can put a probationary period record of up to 2 months in their existing employment contracts. In collective bargaining agreements, the trial period can be extended up to 4 months.

Putting a trial period in each of the fixed-term service contracts continuing as a chain should not be considered valid, except for the first contract. The decision of the 9th Civil Chamber of the Supreme Court of Appeals, dated 13.11.1996 and numbered 1996/12701 and decision numbered 1996/21173, is a precedent for this situation.

During the trial period, both parties have the right to terminate the employment contract without compensation and without prejudice.

The employee whose employment contract is terminated during the trial period has the right to file any lawsuit regarding the wages (wage, overtime, National Holiday General Holiday Claim, Minimum Living Allowance Claim, etc.) until the period he worked. In case of termination of employment during the probationary period, the employer is not obliged to declare a reason for termination.

Even if the employer, who terminated the employment contract during the probationary period, declared a reason for termination, it is accepted that he has to prove this reason. If the parties have set a notice period for termination in the trial period employment contract, they must comply with this period.

Accordingly, the employer is not obliged to grant prior notice if the employee "resigns within the probationary period". In parallel, the answer to the question "Is notice indemnity paid during the trial period" is negative. Employees and employers who terminate the employment contract for just or unjust reasons during the trial period are not obliged to pay notice indemnity to the other party.

УДК 349.2

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FEATURES OF EMPLOYMENT OF FOREIGNERS IN TURKEY

Foreigners have the right to work in Turkey within the framework of international law. In this bulletin, we will convey the most frequently asked questions about the subject such as the conditions required for foreigners to benefit from the right to work in Turkey, the procedure to be followed, the necessary applications and documents, and foreigners who need and do not have a work permit.

General rules regarding the employment of foreigners in Turkey are regulated in the International Labor Law No. 6735. According to this law, the employment of foreigners in Turkey is conditional upon obtaining a work permit from the competent authority.