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CAN A RESIGNATION INTENT DECLARED IN A WHATSAPP GROUP BE CONSIDERED AS PROOF OF RESIGNATION EVENT?

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1. Introduction

In addition to its big impact on our social life, WhatsApp messenger (“**WhatsApp**”) or any other online messaging platform also is used in business life in order for people to communicate quickly and easily. Nowadays, many people are sending work related messages to their colleagues, discuss work related topics, sharing work related documents or conducting their meetings via WhatsApp or any other online messaging platforms.

In addition to day to day communication between employer and employees over WhatsApp or any other online messaging platforms, employees even terminate their employment relationship with their employers by only sending a “text message” to their employers or even to their WhatsApp group of the company. In this regard, the 9th Civil Chamber of the High Court of Appeals issued a decision on December 6, 2021 and with file numbers 2021/11924 E. and 2021/16153 K. stating that a resignation intent declared in a WhatsApp group of the company can be considered as proof of resignation event. This article seeks to shed light on the proof value of text messages sent through online messaging platforms including but not limited to WhatsApp in the event of termination of employment agreements by the employees.

2. Legal procedure for termination of employment agreements by employees

Employees may terminate their employment agreements with a unilateral declaration of intention. Within the framework of the Turkish Labor Law numbered 4857 (“Labor Law”), the employees may terminate their employment agreements with or without providing a notice to their employers based on the conditions of termination event.

According to Article 24 of the Labor Law, the employees may terminate their employment agreements based on a just cause (just causes are specifically listed in the Labor Law) without prior notice and with immediate effect. In case of non-existence of a just cause, the employees may terminate their employment agreements with a notice provided that minimum notification period determined under the Labor Law is observed. As per the Labor Law, the following minimum notification periods must be observed: (i) 2 weeks prior notice if duration of employment is less than 6 months, (ii) 4 weeks prior notice if duration of employment is between 6 and 18 months, (iii) 6 weeks prior notice if duration of employment is between 18 months and 3 years, and (iv) 8 weeks prior notice if duration of employment is more than 3 years. However, it is important to note that the afore-mentioned periods are minimum and may be increased by agreements executed between the parties.

It is important to note that there is no formal requirement for the employees' declaration of intent for termination to be legally valid. Even though Article 19 of the Labor Law states that the employers are obliged to terminate the employment agreements with written notice, such requirement is not applicable to employees. Declaration of intention with regards to the termination of the employment agreement can be provided by a written letter to the employer or such intention can be verbally declared. In their declaration, the employees may specifically state that they terminate their employment agreements or they resigned. However, even if the employees imply that they terminate their employment agreements – in other words, not specifically indicate terminating the employment agreement – such implication will still be considered as a legally valid declaration of intention for termination.

In addition to the foregoing, as per Article 109 of the Labor Law, all of the notification under the Labor Law shall be made in written form and in exchange of signature of the recipient. However, in terms of termination of the employment agreement, this is not a condition for validity but only a condition for proof. Therefore, in case where the employment agreement is terminated by an employee, such written form requirement stipulated under Article 109 does not affect the validity of the termination. However, written termination letter is always highly recommended for the employees for the purpose of proof.

3. The summary of the decision

The decision of 9th Civil Chamber of the High Court of Appeals dated December 6, 2021, is about a lawsuit filed against the plaintiff's former employer for demanding severance payment, overtime payment and payment in lieu of notice due to unlawful termination of the employment agreement by the former employer.

In the lawsuit filed before the first instance court, the plaintiff claimed that his employment agreement was unlawfully terminated by his former employer and claimed (i) severance payment, (ii) overtime payment and (iii) payment in lieu of notice. In its defense, the defendant rejected all of the claims of the plaintiff and stated that (i) this lawsuit cannot be filed for unspecified claim amount and (ii) the demand for overtime payment is time barred. The first instance court decided that the employment agreement was terminated by the defendant unlawfully.

The defendant filed an objection against the decision of the first instance court, before the regional court of justice. The appeal court rejected the application of the defendant on the grounds that the decision of the first instance court is in compliant with the information and documents provided to the lawsuit file and with the applicable legislation. Upon the decision of the appeal court, the defendant appealed against the decision before the High Court of Appeal.

In its decision, the High Court of Appeal stated that (i) the plaintiff sent a message to WhatsApp group of the company, declaring that he ended his employment relationship with the company and (ii) code 3 (code for resignation) was used in the statement of cease of employment. Therefore, the High Court of Appeal ruled that the plaintiff did not earn the right to demand the payment for severance and payment in lieu of notice since the employment agreement was terminated by the plaintiff (employee). As a result, 9th Civil Chamber of the High Court of Appeals considered a resignation intent declared by the employee in the WhatsApp group of the company as a proof of resignation.

4. The evaluation of the decision from employment law perspective

In making an assessment on whether the employment agreement was terminated by the plaintiff (the employee) or by the defendant (the employer) in the case at hand, WhatsApp message sent by the employee to the WhatsApp group of the company had great importance. As we explained above, under Turkish law, there is no specific form requirement for termination declarations of employees. Therefore, even if an declaration of intention of the employee with regards to the termination of his/her employment agreement is in a written form, or is verbally shared, or is provided via a text message over a WhatsApp group, such declaration will be considered legally valid termination declaration under Turkish law.

As it is also clearly stated in the decision of the High Court of Appeals, the plaintiff (employee) terminated his employment relationship with his former employer on his own free will via text message over WhatsApp group of the company. In line with the text message sent by the plaintiff to WhatsApp group, the employer issued the statement of cease of employment of the plaintiff to submit this statement to Social Security Institution and used the code 3 which is a code for resignation in the preparation of the statement. In other words, the legal procedure that shall be followed in case of resignation is properly followed in the case at hand.

5. Conclusion

In light of the aforementioned decision of the High Court of Appeals and considering the legal framework concerning the subject matter herein, a text message sent by the employee to the employer or to WhatsApp group (or any text message group) of the company is considered as a valid termination declaration for the employees. Even though Turkish employment law strictly regulates the legal procedure of termination of the employment agreement by the employer (i.e. written form requirement for termination declarations of the employers), there is no form requirement for termination declarations for the employees.

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