



High Court of Appeals Clarifies Implementation of Post-Employment Non-Compete Obligations

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1. Introduction

Inclusion of non-compete clauses within employment contracts is a widespread practice aimed at protecting an employer's commercial interests, trade secrets, and client networks. However, enforcement of post-employment restrictions requires a balance between employer's commercial interests and employee's constitutional right to work and freedom of contract. Under Turkish jurisprudence, this balance is strictly regulated, as non-compete agreements are made subject to rigorous validity requirements and specific statutory termination grounds.

This article provides an in-depth analysis of a recent landmark decision rendered by the 11th Civil Chamber of the High Court of Appeals (“**High Court**”) dated January 15, 2026, numbered 2025/3271 E. and 2026/186 K (“**Decision**”).

The Decision concerns a lawsuit initiated by a consultancy firm seeking determination, prevention, and cessation of alleged unfair competition, alongside claims for substantial pecuniary and non-pecuniary damages against a former employee and a newly established corporate entity, a shareholder of which is the plaintiff. With the Decision, the High Court confirms that if an employee terminates their contract with just cause, such as due to non-payment of employment receivables, the non-compete obligation becomes moot. The High Court also establishes that in a free-market environment governed by freedom of contract, the mere fact that an action results in breach or termination of a contract does not inherently constitute unfair competition.

2. Legal Framework for Non-Compete Clauses under Turkish Law

Post-employment non-compete clauses are primarily governed by the provisions of the Turkish Code of Obligations No. 6098 (“TCO”). Under Article 444 of the TCO, an employee may undertake a written obligation toward the employer to refrain from competing with them in any manner following the termination of the employment contract. This statutory mechanism is designed to protect an employer's legitimate business interests by prohibiting the former employee from opening a competing business on their own account, working for a rival enterprise, or entering into any other collaborative relationship with a competitor that could cause harm to the former employer.

While these provisions provide a protective shield to employers, validity and enforcement of such clauses are subject to statutory and judicial criteria. The boundaries of such non-compete clause have been explicitly reaffirmed in a recent jurisprudence of the Grand Chamber for Unification of the Jurisprudence of the High Court of Appeals, dated June 13, 2025, numbered 2023/1 E and 2025/3 K. Legal validity of non-compete clauses in employment contracts depends on fulfillment of the following criteria cumulatively:

- (i) **Access to Sensitive Information:** The nature of the employment relationship must provide the employee with access to the employer's client network, trade secrets, or highly sensitive business information.
- (ii) **Risk of Significant Harm:** Potential utilization of this acquired information by the employee must pose a genuine threat of causing significant harm to the employer.
- (iii) **Protection of Economic Future:** The clause must not inequitably prevent the employee's professional and economic livelihood. In order to ensure this, the obligation must be reasonably and proportionately limited in terms of its geographic scope, duration, and subject matter.

In addition to the foregoing, Article 445 of the TCO states that the duration of a non-compete clause cannot exceed two years, unless highly exceptional circumstances and specific conditions apply. Furthermore, a judge may freely evaluate all circumstances and adjust an excessive non-compete clause by limiting its geographic scope, duration, or subject matter, while also considering any performance or benefits that the employer may have provided.

Pursuant to Article 447 of the TCO, a non-compete clause becomes terminated if (i) the employer no longer possesses a genuine interest in the continuation of the restriction, or (ii) the employment contract is terminated either by the employer without just cause, or by the employee due to a fault attributable to the employer.

3. Analysis of the Decision of the 11th Civil Chamber of the High Court of Appeals

In this dispute, the plaintiff asserted that the defendant, who was an employee with access to the company's trade secrets and client networks, established a rival consultancy firm, actively contacted 22 clients of the plaintiff to steer them into changing representatives, and utilized identical contractual templates. The defendant, conversely, argued that he had rightfully terminated the employment contract under Article 24/I of Labor Law No. 4857 due to unpaid labor receivables and the plaintiff accepted that the contract was terminated with just cause, and in such a case non-compete cannot apply.

In evaluating the claims and defenses of the parties, the Court of First Instance dismissed the lawsuit in its entirety, by stating that a post-employment non-compete clause becomes legally ineffective if the employee terminates the contract for just cause.

Upon objection review, the Regional Court of Appeals affirmed the procedural outcome of the dismissal but expanded the legal reasoning. The Regional Court noted that under Article 447/2 of the TCO, the contractual non-compete restriction became moot at the moment of termination since the employer accepted that the employee terminated the employment with just cause.

Furthermore, the Regional Court emphasized that in a free-market environment, every actor possesses the freedom of contract to engage with any party under any terms they choose, and not every action resulting in a breach or termination of a contract inherently constitutes unfair competition.

The High Court also upheld the Regional Court's decision and confirmed its approach.

4. Conclusion

The Decision clearly defines the strict limits of post-employment non-compete clauses and shows the balance between contractual obligations and free-market freedom under Turkish law. This ruling serves as an important reminder that an employer cannot enforce a non-compete restriction, if the employment contract was terminated, because the employer failed to fulfill its legal duties, such as paying wages on time.

Furthermore, the Decision clarifies exactly what needs to be sought for general unfair competition. It reaffirms the basic principle that in a free-market economy, freedom of contract protects the right of clients to choose their service. The simple fact that a client moves from a former employer to a newly established company does not signal a legal wrongdoing in and of itself. Consequently, the High Court sets a balanced precedent, preventing companies from misusing non-compete clauses to stop legitimate entrepreneurship and market competition.

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(First published by Mondaq on June 12, 2026)