

Mandatory Mediation Under Turkish Labor Law

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I. Introduction

An alternative dispute resolution method is expected to be introduced in Turkey shortly through the Draft Law on Labor Courts (“Draft Law”). The purpose of the Draft Law is to bring a functional and an effective judicial procedure for labor conflicts via mandatory mediation and to replace the current regulations.

II. Draft Law

Fundamental reasons of drafting a new code for Labor Courts are specified in the preamble of the Draft law¹:

The first reason is the necessity to ease the workload of labor courts in Turkey. According to the preamble, more than six hundred thousand labor lawsuits are pending before labor courts of first instance and likewise more than two hundred thousand appealed lawsuits are pending before the court of appeals as of 2015, which explicitly lengthen the litigation process. Considering that longer process means greater expense and workload as well as loss of time, many final decisions are no longer able to bring the expected justice for the parties. Therefore, introducing an alternative dispute resolution method (i.e. mandatory mediation) has promptly found its place on the agenda given that it may be able to bring order into this long standing issue.

The second reason is that the current Law on Labor Courts No. 5521 (“LLC”) is 50 years old and although it has gone through seven amendments, it is still inadequate for current needs. Some of the articles (e.g.: articles 9 and 10) are no longer applicable whereas some of the procedures regulated under it are not compatible with the current Law of Civil Procedure No. 6100 (“LCP”) regulating the judicial process.

The third and final reason is that the current LLC is no longer able to meet dynamic and ever-changing demands of labor law in Turkey. The LLC in some cases fails to respond to new fields of working, technological developments and updated employee and employer relationships.

¹ For the access: <http://www.adalet.gov.tr/Tasarilar/> (Date: 25.01.2017)

III. Mandatory Mediation

With the enactment of the Draft Law, many amendments (e.g. establishment and duties of courts) will come into force. Yet, mandatory mediation is apparently the most notable change as it will bring a new perspective to judicial proceedings of labor conflicts. Mandatory mediation broadly aims at shortening the judicial proceedings and easing the workload of labor courts. Additionally, as the name suggests, parties will have to apply for it before filing a lawsuit before the labor courts and can only resort to judicial process should they fail to reach an agreement at the mediation phase.

As per article 3/1 of the Draft Law, with respect to receivable lawsuits based on individual or collective employment agreements as well as re-employment lawsuits, applying for mediation before filing a lawsuit will be mandatory, and if a lawsuit is filed without referring to mediation, the lawsuit will be rejected on procedural grounds, for the absence of cause of action. Accordingly, the legal conclusion of disregarding the mediation phase will be deemed as the absence of cause of action.

IV. Procedure for Mandatory Mediation

The procedure for mandatory mediation is regulated under article 3 of the Draft Law. According to this article, if the subject of the lawsuit is a receivable arising from an employment agreement or re-employment, the plaintiff shall apply to the competent mediation authority for mediation located where the counterparty's domicile or workplace is located.

The selection of mediator is slightly different than ordinary mediation. As per article 3/3, in the mandatory mediation process, the parties may mutually agree on one of the registered mediators. Otherwise, the mediation authority appoints a mediator *ex-officio*. Once the mediator is appointed, s/he gives information and invites the parties for a meeting. Negotiation for mediation shall be concluded in three weeks starting from the date of appointment. In certain circumstances, timeframe can be extended for one week. On the other hand, as per article 3/7, if either of the parties does not attend the meeting without submitting a valid excuse, legal expenses might be imposed on that party, even if the lawsuit is finalized in favor of the respective party. In addition, the statute of limitations does not run for the period between the date the plaintiff applied for mediation and the date the last minute was recorded by the mediator,.

When the mediation procedure is complete, the mediator issues the final minute and sends a copy to the competent mediation authority.

V. Mediation fees

Two different payment methods for different scenarios are regulated under article 3/6 of the Draft Law.

The first scenario is applied when the parties reach an agreement before the mediator. In this case, mediation fees shall be imposed equally on the parties unless the parties agree otherwise. The calculation of fees is based on the second part of the Tariff on Minimum Mediation Fees. The fees shall not be less than two hours of mediation fee regulated under the first part.

The second scenario is applied when the parties are unable to reach an agreement before the mediator. At this stage, fees of the first two hours of the meeting are covered by public treasury and the remaining fees are imposed equally on the parties unless the parties agree otherwise. The calculation of fees is based on the first part of the Tariff on Minimum Mediation Fees. In both scenarios, the fees are deemed as court expenses.

VI. Conclusion

Mandatory mediation that will come into force through the Draft Law is, in principle, a useful alternative dispute resolution solution to reduce the workload of labor courts and improve the judicial process. However given that ordinary mediation has failed to attract the attention of community so far², it might be said that the mandatory mediation may not bring the expected result either. Even so, since the parties will have no option but to apply for mandatory mediation, this, at least, may relatively reduce the workload of labor courts. On the other hand, besides the issue of whether alternative dispute resolution should be compulsory for labor conflicts, which is certainly a controversial topic, it also incurs additional costs for the parties.

Consequently, the Draft Law will set forth various reforms through mandatory mediation and updated articles for the Turkish labor law.

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² Oğuz Özgür, *Türk İş Hukuku'nda Alternatif Uyuşmazlık Çözüm Yolları*, İstanbul 2016, Legal Yayıncılık, p. 60.