

Arbitration - Turkey

Arbitration agreements in employment contracts found null and void

Contributed by **Cerrahoglu Law Firm**

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In a decision dated January 21 2009 (E 2008/44630 K 2009/537) the Ninth Civil Chamber of the Court of Appeals found that arbitration agreements in employment contracts are null and void pursuant to Article 20 of the Code of Obligations.⁽¹⁾

The claimant employee had initiated the lawsuit for severance and notice pay, alleging that the respondent employer had terminated the employment contract without just cause. In turn, the employer argued that the court lacked jurisdiction since the employment contract included an arbitration clause. The court held in favour of the employer and rejected its own jurisdiction on account of the arbitration clause.

On appeal, the court of appeals held that the arbitration clause was null and void since it violated *bonos mores* ('good morals') as per Article 20 of the Code of Obligations. According to the court, it is undisputable that an employee is economically weaker than and dependent on the employer during the formation and term of the employment contract. In other words, an employee is subject to the employer's authority and must follow its instructions. Thus, an employee has no freedom of will. Any agreement, including an arbitration agreement, executed under such conditions violates *bonos mores* and is null and void under Article 20 of the Code of Obligations.

At the end of its decision the court of appeals noted that it is the consistent practice of the Ninth Civil Chamber of the Court of Appeals to deem an arbitration agreement executed during the formation and term of an employment contract null and void.

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Endnotes

⁽¹⁾ Article 20 of the Code of Obligations states that "a contract providing for an impossibility, having illegal contents or violating *bonos mores* is null and void".