Delivering expert knowledge to global counsel

International Law Office®

Litigation - Turkey

Court rules on entitlement for protection under work security provisions

Contributed by **Cerrahoglu Law Firm**

March 13 2012

Background

In a recent decision the Court of Appeals ruled that in relation to an international company with a Turkish subsidiary, employees working abroad in the same business line should also be included when calculating the number of employees required for protection under work security provisions.

Articles 18 to 21 of the Labour Law regulate work security of employees. Article 18 reads as follows:

> "*The employer, who terminates the employment agreement of an employee with an indefinite term, who has been employed at least for 6 months at a workplace with 30 or more employees, shall rely on a valid reason arising from the proficiency or conduct of the employee or the requirements of business, workplace or work. … In case the employer has more than one workplace in the same business line, the number of employees is determined by the total number of employees working at these workplaces.*"

Accordingly, under Turkish labour law, only employees in workplaces with 30 or more employees benefit from the protection afforded by the work security provisions.(1)

The Ninth Chamber of the Court of Appeals recently rendered a noteworthy decision regarding the calculation of total number of employees for international companies with Turkish subsidiaries, which departs from the past practice of the labour courts and the Court of Appeals.(2)

The past practice of the courts has been to include only the employees of liaison offices of international companies in Turkey when calculating the total number of employees. The court's decision in this case has extended the calculation to include employees of international companies with Turkish subsidiaries that are working abroad in the same business line.

Facts

The plaintiff had been employed as a warehouse employee by the Turkish subsidiary of an international group of companies, which is a major player in the global direct sales market, operating in 66 countries. After having worked for more than six years, in October 2008 the plaintiff was dismissed due to the alleged economic challenges faced by the Turkish subsidiary. All of his labour receivables (eg, severance pay and notice pay) were paid.

Relying on Articles 18 to 21 of the law, the plaintiff filed suit against the Turkish subsidiary alleging the invalidity of the termination and seeking his reinstatement to work.

Labour Court decision

The Labour Court dismissed the lawsuit based on the following grounds:

- The Turkish subsidiary had 28 employees in total as of the termination date, and thus the plaintiff could not benefit from the protection of the work security provisions.
- Although the plaintiff claimed that the number of employees would exceed 30 if the foreign managers of the Turkish subsidiary were taken into account, such managers did not qualify as employees working under an employment agreement and thus could not be included when calculating the total number of employees.

The plaintiff appealed to the Court of Appeals.

Appellate decision

The Ninth Chamber of the Court of Appeals reviewed the case file and overruled the Labour Court's decision. The Ninth Chamber stated that depriving an employee of a Turkish subsidiary from the protection of the work security provisions because the number of employees in the Turkish workplace was under 30 would violate the reasoning behind the provisions on work security and the principle of proportionality. According to the Ninth Chamber, the Labour Court should have accepted that the plaintiff was entitled to benefit from the work security provisions and examined the merits of the case to determine whether the termination was valid. The decision of the Ninth Chamber is based on the following grounds:

- When interpreting Article 18 of the law, all workplaces of an employer that are in the same business line should be considered as a whole.
- There is no explicit legal provision that prevents employees working abroad at such workplaces from being taken into account.
- If an international company operating in a number of countries establishes a subsidiary in one country in accordance with local law, and such subsidiary acquires its own legal personality, the employees of such subsidiary should be included when calculating the total number of employees operating in the same business line.

Comment

The method of calculation adopted by the Ninth Chamber in its recent decision has not yet become established practice, either by the labour courts or by the Court of Appeals. The position of the Court of Appeals may become clearer with further decisions on the matter. Nevertheless, international companies with Turkish subsidiaries should take note of this new approach when considering their exposure to the risk of reinstatement lawsuits by ex-employees.

For further information on this topic please contact Ayşegül Gürsoy or Dilek Menteş at Cerrahoğlu Law Firm by telephone (+90 212 355 3000), fax (+90 212 266 3900) or email (aysegul.gursoy@cerrahoglu.av.tr or dilek.mentes@cerrahoglu.av.tr).

Endnotes

(1) According to Articles 20 and 21 of the law, where the employer has no valid reason for terminating the employee, the terminated employee may file suit against the employer claiming invalidity of the termination and seeking reinstatement. If the employee prevails, he or she will become entitled to a maximum of four months' salary for the period he or she spent unemployed. Where the employer does not reinstate the employee within one month of his or her application, the employer will be obliged to pay an indemnity to the employee of between four and eight months' salary.

(2) Ninth Chamber of the Court of Appeals, 2009/46271 E, 2011/131 K.