

Stay of Execution to Mandatory Arbitration

The provisions providing for "appropriate remuneration" to be mandatorily determined by arbitration contained in the Regulation on Employee Inventions, Inventions Made at Institutions of Higher Education and Public-Funded Projects have been widely discussed since the entry into force of the Regulation. However, the Council of State assessed the provisions on mandatory arbitration for employee inventions for the first time in a case filed for the stay of execution and annulment of said provisions.

Before the case was filed with the Council of State, a company employee had filed an action with the Courts of Intellectual and Industrial Property Rights to recover the renumeration he was entitled to, upon the company's application for a patent in appropriation of the invention and without renumerating the inventor. This case was dismissed by the first instance court on the procedural grounds that the Regulation provided for disputes on remuneration to be solved by means of arbitration. Upon the first instance court's dismissal of the case, the employee, arguing that the provisions on mandatory arbitration misappropriates the jurisdiction of the courts without legal basis in primary legislation and that the matter should ultimately be resolved by courts, filed for the stay of execution and annulment of the provisions that relate to mandatory arbitration.

The Constitution guarantees the right to property, accordingly the right to property may only be limited by primary legislation. However the Industrial Property Code that provides the basis for the Regulation does not contain a provision that the amount may only be determined by means of arbitration to determine appropriate remuneration for employee inventions. Therefore, the Turkish Patent and Trademark Office implements the Industrial Property Code cannot limit fundemental rights and freedoms by Regulation in a way that is not present in or that surpasses the Code.

Additionally, as is codified in the Constitution, the main points of legal remedy are the Turkish courts for a person seeking legal remedies in the Turkish Republic, which makes it necessary for there to either be a bilateral contract between the parties or a codification in primary legislation before accepting that courts lack jurisdiction and that arbitration is mandatory.

In this regard, the Council of State, deciding for the stay of execution of the second paragraph of Article 11/2, the phrase "by means of arbitration" in Article 24/1, and Article 24/4, revisited the principle that the general jurisdiction of the courts may only be removed by law and that the contrary is not possible in light of Articles 9, 36, and 141 of the Constitution. The action for annulment is pending.

Evidently then, replacing the jurisdiction of the courts with mandatory arbitration to take its place by means of the Regulation on Employee Inventions, Inventions Made at Institutions of Higher Education and Public-Funded Projects, was found unconstitutional. According to the Constitution, only primary legislation can do this.



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