

Constitutionality of 5% interest rate payment rule under Press Labour Law

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On 19 September 2019 the Constitutional Court found that the requirement for employers to pay interest at a rate of 5% for each day that a journalist's overtime payments remain outstanding conflicts with the Constitution. As such, the court repealed this requirement. ⁽¹⁾

Background

Under Turkish law, journalists are subject to the Press Labour Law 5953, which sets out their employment rights, including their right to a salary. Pursuant to the law, where salary payments are not honoured in due course, the employer must pay interest at a rate of 5% for each day that the salary remains unpaid. The same provision also applies to overtime payments.

These rules have been challenged before the Constitutional Court, as the first-instance courts have concluded that such a high interest rate violates the equality principle between employees by implying that journalists are afforded privileged rights since the Labour Act 4857 does not provide a similar provision for employees in general. However, the Constitutional Court has previously rejected objections that the rule conflicts with the Constitution.

Decision

In the present case, the Constitutional Court had to examine whether the provisions regarding the high interest rate for outstanding salary and overtime payments comply with the Constitution. The court decided that the dispute pending before the first-instance court was not subject to the provision pertaining to salaries and therefore dismissed the application in this respect. However, the court allowed the application with regard to overtime payments and proceeded to examine the constitutionality of this rule.

The Constitutional Court stated that the rule stipulating the interest rate of 5% per day equalled 1,825% annually. The court conducted a comparative evaluation of the provision in scope of the right to justice in salary and the right to freedom of enterprise of those who are active in the press sector. In its decision, the court found it favourable and necessary to make special regulations to secure journalists' right to salary due to the responsibilities and duties that they undertake in a democratic society. However, the court also argued that there must be a balance between this public interest and the right to freedom of enterprise, pursuant to the proportionality principle.

Nonetheless, the Constitutional Court ruled that the requirement to pay interest at a rate of 5% per day places an excessive burden on employers and may result in journalists' unjustified enrichment. Therefore, the court repealed the provision on the grounds that it breached the principles of proportionality and equality.

Counterarguments to this decision mostly focused on the distinct role of journalists in society and stated that the rule complied with the above principles subject to evaluation.

Comment

Due to the identical wording of the repealed overtime provision and the salary provision that is still in force, it is likely that the 5% payment rule as regards salary payments will also be repealed if an application is made before the Constitutional Court.

Further, there is a discrete opinion in the doctrine which asserts that the interest rate is the penalty for non-payment of a salary and that journalists are therefore not entitled to terminate an

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employment relationship based on just cause in cases of non-payment of salary, unlike under the Labour Act 4857. This opinion is expected to be abandoned if the rule is repealed, at which time non-payment as a just cause of termination will likely gain more supporters.

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Endnotes

(1) Decision 2019/48 E, 2019/74 K, 19 September 2019.

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