

Constitutional Court Cancelled the Regulation on Choice of Law in Employment Contracts



In the Official Gazette dated 10 March 2025 and numbered 32837, the judgment of the Constitutional Court numbered 2023/158 E., 2024/187 K. and dated 05.11.2024 ("Decision") was published. In the Decision, it has been ruled that Article 27, paragraph 1 of the Law on Private International Law and Procedural Law is contrary to Article 49 of the Constitution regulating the freedom to work and the provision has been cancelled.

Paragraph 1 of Article 27 of the Law on Private International Law and Procedural Law provides that "Employment contracts shall be governed by the law chosen by the parties, without prejudice to the minimum protection which the employee shall enjoy under the mandatory provisions of the law of his habitual place of work."

In the justification of the relevant Decision, it is stated that it is a requirement of the positive obligations of the state regarding the right to work to ensure a balance in employee-employer relations by stipulating regulations for the protection of the employee, who is the weaker party of the employment contract.

For this reason, the rule regulating the law applicable to employment contracts with a foreign element should not conflict with the positive obligations of the state regarding the protection of employees. In this context, the Decision states that the absence of safeguards to prevent the choice of law in employment contracts from having consequences to the detriment of the employee is incompatible with the positive obligations of the state regarding the protection of employees.

The Decision also states that the bargaining power of the employee, who is the weaker party to the contract, vis-a-vis the employer with respect to the choice of law is limited in principle. Accordingly, it is clear that by making a choice of law, the employer may be relieved from the obligations stipulated in the more closely related law, and in this case, the employee may be deprived of the protection provided by the law in question. For this reason, it is stated that the employee, who is the weaker party to the contract, may not be able to benefit from the rights that he would have in the absence of a choice of law.

As a result, the Constitutional Court concluded that the relevant provision, which leads to the elimination of the rights that the employee may have in the event of a choice of law in employment contracts, does not provide a fair balance in employee-employer relations and is contrary to the state's obligations to protect employees.