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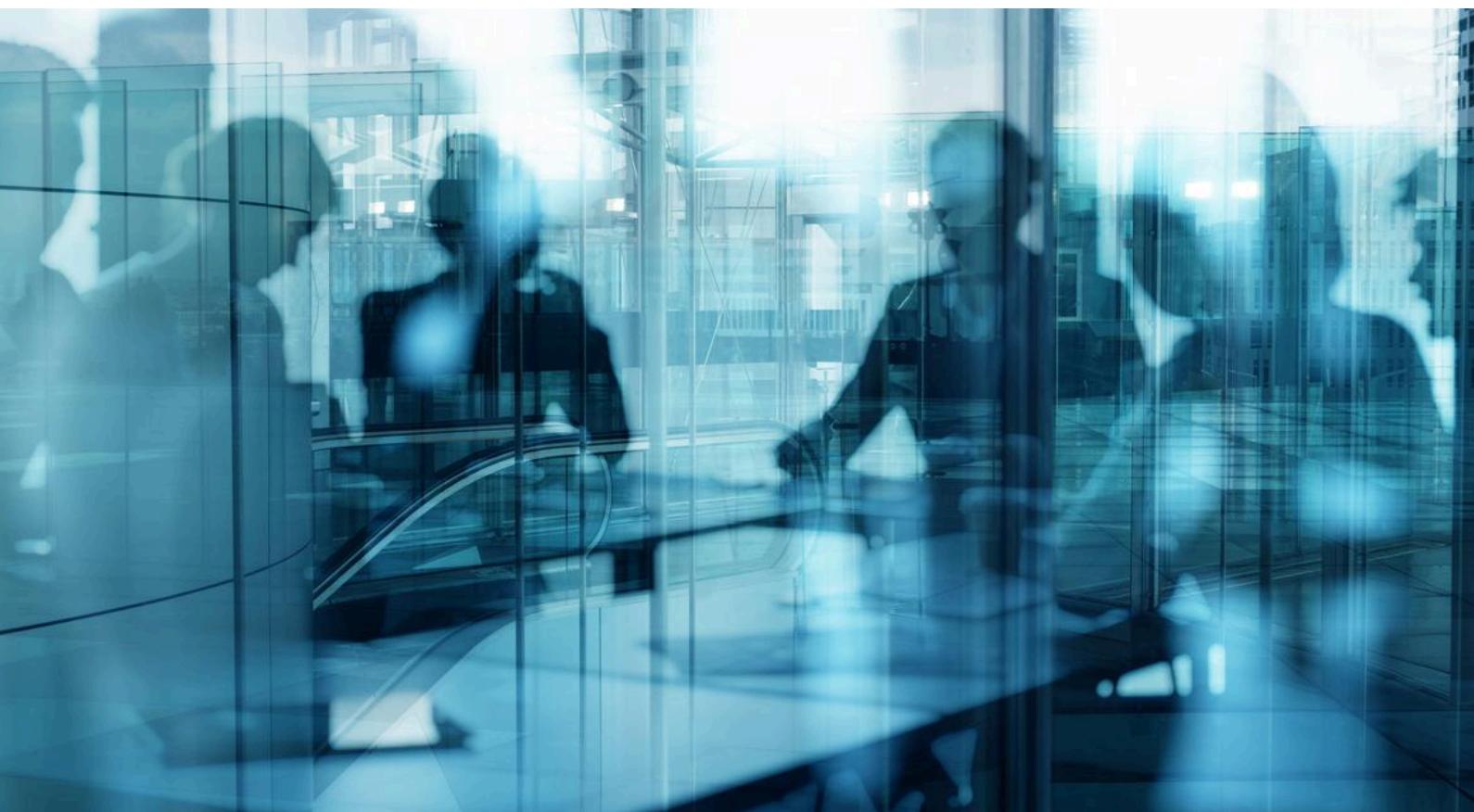

The Constitutional Court Finds a Violation of the Right to Unionization Due to Insufficient Judicial Review of Exclusion from Collective Bargaining Agreement Benefits

- **Date of Decision:** 1 October 2025
- **Official Gazette Publication:** 6 January 2026, No. 33129
- **Application No:** 2021/26482

On 6 January 2026, the Constitutional Court published its decision in the *Fatih Korkmaz* application in the Official Gazette. The Court examined whether excluding an employee from benefiting from a collective bargaining agreement ("**CBA**") based on an agreement protocol concluded between the employer and the authorized union constituted a violation of the constitutional right to unionization.

Background

The applicant was employed as a press operator at a private company and was a member of the authorized trade union at the workplace. During the relevant period, several CBAs were concluded between the

employer and different unions, alongside an additional agreement protocol regulating the implementation of certain CBA provisions.

Following the termination of his employment contract, the applicant initiated legal proceedings claiming that he had been unjustly excluded from benefiting from the CBA despite fulfilling the statutory conditions. He argued that the agreement protocol, which limited the scope of CBA benefits for certain periods and categories of employees, resulted in an unlawful deprivation of his union-related rights.

The first-instance court and the regional appellate court rejected the applicant's claims, relying primarily on the agreement protocol and established Court of Cassation jurisprudence regarding the applicability of CBAs and their temporal scope.

Findings of the Decision

The Constitutional Court held that the applicant's complaint was admissible and proceeded to assess the merits under **Article 51 of the Constitution**, which guarantees the right to form and join trade unions.

In its assessment, the Court emphasized that:

> ➢ The right to unionization encompasses not only the freedom to join a union but also the effective enjoyment of rights arising from union membership, including the right to benefit from CBAs.
> ➢ Excluding an employee from CBA benefits through agreement protocols must be assessed in light of the State's **positive obligations** to ensure effective protection of union rights. The Court did not hold that agreement protocols are per se unlawful, but emphasized that their effects on union-related rights must be subjected to effective judicial scrutiny.
> ➢ Domestic courts are required to conduct a thorough and rights-based examination when disputes concern the scope and implementation of CBAs, particularly where union rights are at stake.

The Court found that the domestic courts failed to sufficiently examine whether the agreement protocol disproportionately interfered with the applicant's right to benefit from the CBA. By relying solely on the protocol without adequately balancing union rights and statutory safeguards, the courts did not provide relevant and sufficient reasoning compatible with constitutional standards.

Summary and Conclusion

In conclusion, the Constitutional Court held that the applicant's right to unionization under Article 51 of the Constitution had been violated as a result of his exclusion from benefiting from the collective bargaining agreement. As a remedy, the Court ordered a retrial to eliminate the consequences of the violation and awarded the applicant TRY 34,000 in non-pecuniary damages. The compensation was awarded solely as non-pecuniary damages and does not relate to back pay or CBA-related monetary claims. The decision reiterates the Constitutional Court's established approach that any limitations on benefiting from CBAs must be subject to careful and effective judicial scrutiny and must not undermine the effective exercise of union rights through procedural or contractual arrangements in the absence of adequate judicial reasoning.

The full text of the Decision is available at this link.