

Advisory

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Publication

Non-Union Employees Entitlement to Benefit from Collective Bargaining Agreements: Court of Cassation Holds that the Request Date is Decisive



Introduction

The decision of the 9th Civil Chamber of the Court of Cassation dated 17 February 2025 and numbered 2025/8655 E., 2025/9695 K. (the “**Decision**”) was published in the Official Gazette dated 5 April 2026 and numbered 33215. The decision concerns the date from which non-union employees may benefit from a collective bargaining agreement by paying a solidarity fee.

In the concrete case, the claimant has been employed by the respondent institution since 2 April 2018. A collective bargaining agreement with a term of 1 January 2021 – 31 December 2022 was concluded between the respondent institution and the relevant union.

The claimant, although not a union member, requested to benefit from the collective bargaining agreement by paying a solidarity fee as of the execution date, i.e. 1 January 2021. The respondent, on the other hand, argued that the claimant could only benefit from the agreement as of the request date of 8 October 2021.

The first instance court, with reference to the annulment decision of the Constitutional Court dated 3 March 2021, upheld the claimant's request and ruled that the claimant could benefit from the collective bargaining agreement retroactively.

The decision was brought before the Court of Cassation through an appeal in the interest of law by the Ministry of Justice. The Ministry of Justice argued that benefiting from a collective bargaining agreement through the payment of a solidarity fee is only possible as of the request date.

Assessment of the Court of Cassation

In its review, the Court of Cassation examined the legal nature of benefiting from a collective bargaining agreement through the payment of a solidarity fee and the starting date of such entitlement.

In the decision, with reference to the Constitutional Court's annulment decision dated 3 March 2021, it was emphasized that non-union employees may benefit from a collective bargaining agreement by paying a solidarity fee; however, such benefit cannot be applied retroactively.

The key findings of the Court of Cassation are as follows:

- Benefiting from a collective bargaining agreement by paying a solidarity fee produces legal effect as of the date on which the employee submits their request to the employer.
- It is not possible to benefit retroactively for periods prior to the request date, including from the effective date of the collective bargaining agreement, i.e. 1 January 2021.
- Considering the uncertainty inherent in the negotiation and conclusion process of collective bargaining agreements, granting retroactive rights may disrupt the balance between employees and employers as well as the balance between unions.
- Allowing non-union employees to benefit retroactively may undermine the system that incentivizes union membership.

Furthermore, the Court of Cassation explicitly stated that, pursuant to Article 39 of Law No. 6356 on Trade Unions and Collective Bargaining Agreements, benefiting through the payment of a solidarity fee is only possible as of the request date, and that this principle remains valid following the Constitutional Court's decision.

In the concrete case, taking into account that the claimant submitted the request to benefit from the collective bargaining agreement on 8 October 2021, it was concluded that the claim for periods prior to this date is not in compliance with the law.

Conclusion

The Court of Cassation accepted the appeal in the interest of law filed by the Ministry of Justice, set aside the decision of the first instance court, and held that non-union employees may benefit from a collective bargaining agreement by paying a solidarity fee only as of the request date, and that such benefit cannot be claimed retroactively.

The decision clarifies an issue of practical importance and reinforces the approach that benefiting through a solidarity fee has only prospective effect. Accordingly, it is understood that employees must timely express their intention to benefit from a collective bargaining agreement; otherwise, claims relating to prior periods will not be upheld.

The full text of the Decision is available at this [link](#).