A Recent Turkish High Court Ruling: Impact of Ongoing Employment on Validity of Mediation Agreements

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1. Introduction

In recent years, there has been a significant increase in the use of voluntary mediation as a preferred method for resolving disputes, driven by the lengthy and costly nature of court proceedings.

However, as established by a recent decision of the High Court of Appeals, the mere willingness of the parties to engage in voluntary mediation and the subsequent agreement are not sufficient for the validity of the process; first and foremost, there must be a dispute between the parties.

2. Mediation Concept in Employment Disputes

Mediation is defined in the Law on Mediation in Civil Disputes No. 6325 ("***Law***") as "*A dispute resolution method conducted on a voluntary basis with the participation of an unbiased and independent third party with specialized training, who can bring the parties together to discuss and negotiate by applying systematic techniques, to establish a communication process between the two parties in order to ensure that both parties can understand each other and create their own solutions, and to propose a solution in case the parties cannot find a solution.*". In this context, mediation aims to resolve disputes voluntarily with the assistance of a neutral third party, without resorting to court proceedings. A key requirement is that the dispute must involve a matter over which the parties have discretion.

Under Turkish law, mandatory mediation was introduced for the first time in 2018, requiring parties to apply to a mediator before filing a lawsuit for the resolution of individual labor

disputes. This marked the emergence of the concept of mandatory mediation. The primary rationale behind this requirement is to address the growing caseload in labor law and labor courts, as well as to reduce the lengthy time required to finalize such lawsuits.

The key distinction between voluntary and mandatory mediation lies in how the process is initiated. In voluntary mediation, the parties decide to engage in mediation on their own initiative. This process begins either through mutual agreement or at the proposal of one party, which must be responded to within 30 days; otherwise, the proposal is deemed rejected. In the contrary, mandatory mediation does not involve a response period for the mediation notification. Parties are not required to formally respond or indicate their decision to participate in the mediation meeting. Instead, they may simply choose whether or not to attend the meeting.

Following the application for mediation, the mediator is either selected by mutual agreement of the parties or, if the parties cannot agree, appointed by the Mediators Bureau to conduct the process. Once the mediator is chosen, the parties are invited to the first mediation meeting, with the date either proposed by the mediator or agreed upon by the parties. The mediator sends an invitation detailing the principles of mediation and the proposed schedule for the first mediation meeting.

After the first mediation meeting, the meeting notes must be signed by both parties or their representatives, as well as the mediator. If additional mediation meetings are deemed beneficial for resolving the dispute, the parties may hold multiple sessions. Following each mediation meeting, the respective meeting notes must also be signed by both parties or their representatives and the mediator.

Once all issues have been discussed during the meetings, provided that the parties have participated in the meetings, the mediator documents the outcome – whether an agreement or lack thereof – and this document must be signed by the parties or their representatives, as well as the mediator. If the parties reach an agreement, they cannot subsequently file a lawsuit on the matters they have settled. If the parties could not reach an agreement, the document attesting to this should be submitted to the court by the plaintiff in order to prove that the mandatory mediation requirement has been exhausted. However, certain things should be included in these agreement documents, which will be further elaborated below.

2.1. Key Elements to Include in Mediation Agreements

The mediation agreement document is defined in legal doctrine and case law as a contract that formalizes the agreement reached by the parties through mediation. It is finalized upon being signed by the parties (or their representatives or attorneys) and the mediator.

It is important to note that, in addition to the validity requirements stipulated in the Law and established precedents, mediation, as a dispute resolution mechanism regulated by the Law, necessitates existence of an actual dispute between the parties as a fundamental prerequisite.

In addition to the foregoing, the first essential element of a valid mediation agreement document is that the agreement must arise directly from the mediation process itself. If the document is signed by the mediator only after the parties have already reached a mutual agreement, it does not indicate that a lawful mediation process has taken place. Legal validity of the mediation process requires the active involvement of the mediator from start to finish. Therefore, lawfulness of the mediation activity must be maintained at every stage. When this requirement is fulfilled, the first essential element of the mediation agreement document will be satisfied.

The second element that must be included in the agreement document is the agreement of the parties. According to Article 17 of the Law, at the conclusion of the mediation activity, the parties' agreement, disagreement, or the outcome of the mediation process must be documented in a minute. Since the parties waive their right to bring any claims against one another upon execution of mediation minutes as to the settlement of the dispute, their intention to settle should be explicitly reflected in the minutes. This means that the mere implication of parties agreeing to settle the disputes within the meeting minutes does not suffice to be deemed as a consensus, and the parties are required to specify the terms explicitly, and on what grounds and consideration the agreement is made, in order for this to be deemed as the applicant cannot use the right to bring a claim on the agreed matters. So, if the terms and conditions on which the agreement are made are not clearly laid out, the meeting minutes shall be annulled, and the employee may proceed with filing a lawsuit.

The third and final element required for validity of the agreement document is its form. For the document to be considered a valid mediation agreement, the signatures of both the mediator and the parties must be included.

3. Analysis of the High Court Decision and its Reasoning

The case before the 9th Civil Chamber of the High Court of Appeals numbered 2024/10147 E. and 2024/13332 K., primarily concerns validity of voluntary mediation agreement documents. The plaintiff filed the lawsuit on the grounds that his employment contract was terminated without just cause and that his employment-related receivables were not paid. In response, the defendant (i.e., the employer) argued that the parties had reached an agreement through voluntary mediation, asserting that a lawsuit cannot be filed regarding the matters agreed upon and that the plaintiff had no unpaid receivables.

Based on these claims, the court of first instance dismissed the lawsuit with the reasoning that an agreement had been reached regarding the receivables subject to the lawsuit in the mediation agreement minutes. The court also determined that pursuant to Article 18 of the Law, no lawsuit could be filed concerning the matters that were agreed upon at the conclusion of the mediation process.

The plaintiff filed an appeal, arguing that the mediation minutes were invalid because they were issued by a mediator who was also the defendant's attorney and they were issued at the defendant's workplace, during a time when the parties could not freely stipulate for the matters in question. However, the Regional Court of Appeal, which reviewed the case, rejected the appeal on similar grounds as the first-instance court. The employee then appealed the decision before the High Court of Appeals.

When the case was reviewed by the High Court of Appeals, it was determined that two separate voluntary mediation meetings were held on October 10, 2020, and April 30, 2021, at the employer's request. While the employer claimed that the employee resigned on October 10, 2020, i.e., the date of the first mediation meeting, but was re-hired on October 18, 2020, the "*employee monthly follow-up chart*" submitted by the employer shows that the employee was on leave from October 10 to October 17, 2020, not resigned. On the other hand, the invoice samples provided by the employee showed that he continued to work at the workplace during these dates.

Additionally, the resignation petition, dated September 9, 2020, indicated that the plaintiff voluntarily resigned for personal reasons without any pressure. Similarly, the resignation petition, dated April 29, 2021, showed that the plaintiff again resigned for personal reasons, and both petitions contained statements confirming that the plaintiff had received all his legal entitlements. It is also noted that the petition dated April 29, 2021 is not hand-written.

In evaluating the case, the High Court firstly determined that, regardless of the validity of the statements in the resignation petitions, there was no evidence of a dispute between the parties prior to the commencement of the mediation process. Indeed, the documents available led to the conclusion that no dispute existed before mediation began as the employee indicates that he does not have any receivables.

The High Court also found that the employee's employment contract was not terminated and that the employee continued to work. So, as the employment has not terminated, it is not possible to have a dispute between the parties regarding severance and notice payments.

The Court ruled that the compensation and leave payments made under the claim of termination of the employment contract, which were agreed upon in the mediation agreement, did not eliminate the advance nature of the payment, given that there was no actual termination of the employment contract.

Consequently, the Court stated that converting the annual paid leave entitlement into monetary compensation while the employment contract was still in effect is also unacceptable.

4. Conclusion

Both voluntary and mandatory mediation processes are increasingly preferred due to their ability to reduce the workload of the courts, offering a faster and more cost-effective means of dispute resolution for the parties involved. However, the intention and active participation of the parties seeking mediation, along with effective and genuine communication, are just as crucial as the mediation process itself.

The case reviewed by the High Court of Appeals highlights important issues regarding validity of voluntary mediation agreements and their role in resolving disputes, particularly in

employment-related matters. This decision underscores the need for mediation agreements to accurately reflect the true and voluntary intentions of the parties and cautions against using mediation to bypass the rights of the parties, particularly when no genuine dispute exists before the mediation begins.

It can be seen that even though the parties have participated in the mediation process, the process has been conducted in the presence of a mediator and a minute of agreement has been duly signed, the fact that there is no dispute requiring to apply to the mediation in the first place will still negatively affect the validity of this agreement.

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