

INFORMATION NOTE REGARDING THE CONSTITUTIONAL COURTS DECISION NUMBERED 2016/5824

1. Introduction

The Constitutional Court's ("AYM") decision numbered 2016/5824 ("Decision") regarding the employer's prohibition of discrimination and right to respect for private and family life, which employer fails to provide equal daycare facilities to the certain female workers in the same workplace has published in the numbered 31732, dated 27 January 2022 the Official Gazette.¹

2. Matter in Dispute

The Applicant has worked in the workplace during 2005 – 2011 years and sent her child to daycare in 2010-2011 period. The Applicant filed an action against the employer with the claims of failing to provide daycare facilities to herself while providing the other female workers and requested discrimination compensation right along with the daycare cost of 4.000 ₺ and its statutory interest, at the İstanbul Anatolian 21st Labour Court (the "Labour Court").

3. Final Decision

The Labour Court accepted the action in terms of discrimination compensation and ordered the employer to pay compensation to the Applicant of 3,787,28 ₺ but rejected the Applicant's destitute rights and demand regarding the recovery of the daycare fee from the employer. Upon the appeal of the parties, the decision of the Labour Court was reversed by the 9th Civil Chamber of the Court of Appeal on the grounds that the Applicant failed to prove the discrimination grounds listed in Article 5 of the Labour Law No. 4857 ("Law No.4857").

4. Individual Application to the Court and Court's Decision

After the final decision, the Applicant filed an individual application to AYM and AYM has concluded that benefiting from daycare affects a family's peace and welfare and the daycare facilities regulated in Article 88 of the Law numbered 4857 and with the former Regulation on Working Conditions of Pregnant or Nursing Women, Nursing Rooms and Child Care Dormitories falls within the scope of the right to respect for family life which guaranteed by Article 20 of the Turkish Constitution ("Constitution").

AYM has concluded that the employer created differences in providing daycare facilities among the female workers with similar situations and also the employer has the burden of proof regarding the differences created among the female workers have objective and reasonable grounds. However, there was not any explanation given by the employer regarding the reason for said differences and the first instance courts have failed to consider the fact the employer has not fulfilled the burden of proof. Therefore, AYM determined that the prohibition of discrimination has been violated by the employer.

¹ For Access; <https://www.resmigazete.gov.tr/eskiler/2022/01/20220127-6.pdf>

With this decision which could set an important precedent, AYM decided the application of the Applicant regarding the violation of prohibition of discrimination in connection with the right to respect for family life is admissible and right to respect family life regulated with article 20 of the Constitution and prohibition of discrimination protected with article 10 of the Constitution have been violated.

Kind Regards,

Koyuncuoğlu & Köksal Law Firm

* As the explanations given in our newsletter are prepared pursuant to the legislation in effect in the Republic of Turkey and the disclosures made to the public by the relevant official authorities, in case of uncertainty, we advise you to seek advice and support from us before the final transactions are carried out. Otherwise, our Law Firm cannot be held responsible for the actions to be taken on the basis of the explanations contained herein and the consequences of such actions.