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INFORMATION NOTE REGARDING THE DECISION OF THE CONSTITUTIONAL COURT ON THE BREACH OF FREEDOM OF EXPRESSION WITH THE TERMINATION OF THE EMPLOYMENT AGREEMENT OF AN EMPLOYEE DUE TO THE EXPRESSIONS IN HIS SOCIAL MEDIA POST

In the Kadri Erogul individual application decision dated 11.05.2022 and numbered 2019/976, published in the Official Gazette dated 16.08.2022 and numbered 31925, the Constitutional Court decided that the termination of the employment contract of the applicant working in a public institution as the employee of a subcontractor, due to his social media posts regarding the managers, violated the freedom of expression.

I. SUMMARY OF FACTS

The applicant worked at the Kütahya Public Health Directorate ("Directorate") with a fixed-term employment contract under the payroll of a private company starting from 01.01.2006 until 11.03.2016, when his contract was terminated. The applicant stated that he has been working continuously at the Directorate since 01.01.2006, however, since the subcontractor was being determined by the Directorate via a tender on an annual basis, each year he worked for a different subcontractor. At the same time, the applicant is the chairperson of the Public Subcontracted Workers' Association.

The applicant shared a post on his social media account about the difficulties that the subcontracted workers have and the managers on 14.08.2015. A part of the relevant post is as follows: "*Human piece of garbage, scumbag managers, never forget that...*" Upon seeing this post some managers of the Directorate filed a complaint about the applicant, and a public prosecution was filed on the allegation that he made insulting statements. As a result of the lawsuit, it was decided to punish the applicant on the grounds that even though the accused has stated that he did not intend to insult anyone while writing the words that are the subject of the crime, this defense was an implicit confirmation and could not be relied on given the other evidence collected. Considering the way that the crime was committed, the penalty was determined based on the lower limit, and it was decided to defer the announcement of the verdict since the accused did not have a previous criminal record and there was no tangible losses caused by the crime.

II. ASSESSMENT OF THE CONSTITUTIONAL COURT AND CONCLUSION

In his application to the Constitutional Court, the applicant declared that the statements were related to the issues of subcontracted workers working in the public sector and that the termination of his employment contract due to his statements violates his right to freedom of expression, the fact that no action was taken against those who liked the social media post but action was taken against him violates the principle of equality, that his inability to appeal the decision due to the deferral of the announcement of the verdict in the criminal proceedings violates his right to legal remedies and that the decision of the criminal court of first

instance being taken as a basis for the decision in the action for the reinstatement to job violates his right to a fair trial.

The Constitutional Court evaluated the application within the scope of Article 26 of the Constitution, which regulates freedom of expression.

In the decision, it is stated that it is necessary to determine whether a fair balance has been established between the applicant's freedom of expression and the obligation of loyalty to the employer.

The Constitutional Court further stated that the courts of first instance must have evaluated whether the employer has complied with the principle of "ultima ratio". According to such principle, although it can be argued that the employer's interests would be negatively affected and the continuation of the employment relationship cannot be expected in cases where the productivity of the work decreases or the trust relationship is destroyed due to reasons arising from the employee, termination of the employment relationship must be compulsory and last resort.

Consequently, the Constitutional Court has decided that the applicant's freedom of expression was violated, by emphasizing that the applicant used the general concept of "manager" in his social media post without targeting a specific person, that the decision of the courts of first instance that the main purpose of the applicant was to humiliate the managers has been made by attributing a meaning to the words used by the applicant beyond the meaning originally given to them by the applicant, that the adoption of the extreme interpretation made by the courts of first instance by not taking into account the identity of the applicant's association chairmanship and accepting that the applicant was targeting the managers of the Directorate through indirect ways, even though it was not directly pointed out, would make public communication impossible.

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Should you have any queries on the above, please do not hesitate to contact us.

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