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Araştırma Makalesi

EVALUATIONS ON THE SCOPE OF JOB SECURITY IN TURKEY IN LIGHT OF THE JUDGEMENTS RENDERED BY THE SUPREME COURT OF APPEALS

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ABSTRACT

One of the most significant aspects and purposes of the Labour Law is to preserve the existence of the labour relations between employers and labourers and secure the jobs of labourers. The purpose of the job security provisions is to deter employers from termination of employment contracts arbitrarily without a valid reason and thereby, ensure continuity in labour relations. Every labourer, whose employment contract has been terminated, is not entitled to benefit from the job security provisions. Due to those conditions required in the job security system, the job security provisions apply to a certain part of labourers only.

Keywords: Job security, job security system, protection of labourers, employment contract of definite duration.

Research Article

YARGITAY KARARLARI IŞIĞINDA TÜRKİYE'DE İŞ GÜVENLİĞİ KONUSUNDA DEĞERLENDİRMELER

ÖZ

İş Kanununun en önemli yönlerinden ve amaçlarından biri, işverenler ile işçiler arasındaki iş ilişkilerinin varlığını korumak ve işçilerin işlerini güvence altına almaktır. İş güvenliği hükümlerinin amacı, işverenleri geçerli bir gerekçe olmaksızın keyfi olarak iş sözleşmelerinin feshedilmesinden caydırmak ve böylece iş ilişkilerinde sürekliliği sağlamaktır. İş sözleşmesi feshedilen her işçi, iş güvenliği hükümlerinden yararlanma hakkına sahip değildir. İş güvenliği sisteminde gerekli olan koşullar nedeniyle, iş güvenliği hükümleri sadece işçilerin belirli bir kısmı için geçerlidir.

Anahtar Kelimeler: İş güvenliği, iş güvenliği sistemi, işçilerin korunması, belirli süreli iş sözleşmesi.

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I- IN GENERAL

One of the most significant aspects and purposes of the Labour Law is to preserve the existence of the labour relations between employers and labourers and secure the jobs of labourers.[1]In general terms, job security is a concept that includes the entire measures intended for ensuring continuity to labour relations and consequently, to the incomes of labourers.[2]Therefore, job security is a Labour Law concept which is included in the scope of protection of labourers against termination and which, in order to protect the jobs of labourers, restricts employers' rights of termination and which is comprised of unilateral rights that may be exercised only by labourers and is introduced against exercise of their right of termination arbitrarily by employers. The concept of job security is given a meaning as introduction of certain restrictions against employers' right to terminate employment contracts or power to dismiss labourers. Principally and in essence, the intention is to deter employers from dismissal of labourers arbitrarily. So then, one of the most significant elements and purposes of job security is to impede arbitrary dismissals. Such a goal could be achieved by means of the requirement that, while employers are dismissing labourers, employers rest on a valid reason stipulated by the Act and by means of the judicial review of those causes.[3]

In our Country, until the Act No 4773, an employer or a labourer had, at will, the opportunity to terminate the contract by complying with the notice periods fixed in the Act and without the necessity to indicate a ground, in the terminations that would take place by notice of termination.[4] This circumstance incorporated considerable inconveniencies particularly for labourers by the reason that they had worry for losing their jobs at any moment. Therefore, the opinions were delivered that the legal provisions on job security, being applied in Western Countries, should be adopted in our Country as well[5]. Thereupon, "The Convention concerning Termination of Employment at the Initiative of the Employer" (Convention No 158), adopted by the General Conference of the International Labour Organization (ILO) in 1982, was ratified by Turkey under the Act No 3999 in 1994. In order to accommodate to this

[1]Nuri Çelik/Nurşen Caniklioğlu/Talat Canbolat, Labour Law Courses, Istanbul 2018, 469.
[2]Münir Ekonomi, (Seminar for Termination of Employment Contracts and Job Security within the Framework of the New Labour Act), 25 June 2004, March 2005, Publication No. TUSIAD-T/2005 - 03/390, 22.
[3]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 20.04.2009, File No 2008/27835, Judgment No 2009/11273, www.calismatoplum.org/sayi23/abc/43.pdf, 333; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 20.04.2009, File No 2008/27835, Judgment No 2009/11273, www.calismatoplum.org/sayi23/abc/43.pdf, 333; Mustafa Alp, Protection of Labourers Against Termination, 1, http://webb.deu.edu.tr/hukuk/dergiler/DergiMiz5-1/PDF/alp1.pdf.
[4]Ünal Narmanlıoğlu, Labour Law, Individual Labour Relations, Istanbul 2014, 495; Sarper Süzek, Labour Law, Istanbul 2015, 571.
[5] Yıldırım Koç, Job Security in the World, Türk-İş Eğitim Publications No.50, Ankara, 2000, 2, 3.

Convention, the Act No 4773 was enacted and entered into force on 15.03.2003. Thereafter, the provisions introduced by the Act No 4773 were incorporated into the Labour Act No 4857 after certain amendments.

The purpose of the job security provisions, regulated in the Article 18 and the subsequent Articles of the Labour Act No 4857, is to deter employers from termination of employment contracts arbitrarily without a valid reason that may be considered as legitimate and reasonable and thereby, ensure continuity in labour relations.[6]These legal provisions containing mandatory rules impose a number of specific obligations on employers and aim to secure the jobs of labourers. However, job security does not amount to impede all the terminations by the employers and ensure an absolute protection in favour of labourers against termination. In other words, job security does not grant labourers with an absolute right on preservation of their jobs at all events, in order to sustain the labour relations created by them at the workplaces. Job security aims to impede arbitrary terminations by employers and impose employers the obligation to terminate an employment contract on the basis of valid reasons. In this respect, job security aims at preservation of the existence of labour relations, and it intrinsically incorporates the exercise of termination as a last resort.[7]

The adoption of a security system in the Labour Act does not bring about an order that eliminates or impedes termination of employment contracts for indefinite duration and key requirements of these terminations. As with the labourers, the employers' right to terminate an employment contract of indefinite duration maintains its existence. Job security and the restrictions accordingly introduced against the exercise of the right to terminate by employers, the employers' entitlement to exercise the right to terminate on the basis of a valid reason, the right to apply for a judicial review in this matter, the legal consequences and sanctions where the termination does not take place on the basis of a valid reason may come into question merely with regard to the labourers for whom the conditions required for taking the advantage of job security take place.[8]

This is because; labourers are, upon occurrence of specific conditions, entitled to benefit from the job security system introduced by the Article 18 and the subsequent Articles of the Labour Act. Every labourer, whose contract has been terminated, is not

[6]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 18.12.2006, File No 2006/26675, Judgment No 2006/33403, www.calismatoplum.org/sayi14/abc/9daire/32.doc, 260; The Civil Chamber No 9 of the Supreme Court of Appeals, dated, 11.12.2006, File No 2006/25024, Judgment No 2006/32633,www.calismatoplum.org/sayi13/abc/9.daire/14.doc, 204.
[7]Ekonomi, 25; For the concept of valid reason, please see: Murat Engin, "Job Security and Termination of Employment Contract on the Basis of the Requirements of the Workplace", Meeting of 5 March 2005, (Labour Act Meeting Series II), March 2005, Publication No. Tüsiad-T/2005 - 05/393, 15; A. Nizamettin Aktay/Kadir Arıcı/E. Tuncay Senyen-Kaplan, Labour Law, Ankara 2013, 185.
[8]Ekonomi, 20.

entitled to benefit from the job security provisions. Only the labourers, who are included in the scope of the job security provisions, may benefit from this opportunity. Due to those conditions required in the job security system, the job security provisions shall apply to a part of labourers only.[9]In almost all of the Countries that adopt job security, the relevant protective provisions are not entered into force in such a scope that they cover all labourers, and a number of restrictions are introduced depending on various criteria with regard to the scope of application pertaining to job security as well as the economic and social conditions of the Country and qualifications of labourers.[10]In the Convention No. 158, it is also adopted that the Countries which ratify this Convention may introduce certain exceptions in their legal provisions on the protection of labourers against termination and that certain conditions may be required for taking the advantage of the protection. In the Article 2/1 of the Convention, it is stated that the provisions of this Convention shall apply to all branches of economic activity and to all employed persons. Then, the Convention also allows for introduction of exceptions as to the labourers and the matters referred to in the paragraphs 2, 4 and 5 and thereby, for exclusion of certain labourers from job security.

In the Article 18 of the Labour Act, job security is regulated by the following provisions: "At a workplace where thirty or more than thirty labourers are being employed, an employer, who terminates the employment contract of indefinite duration pertaining to a labourer with a seniority of at least six months at that workplace, has to rest on a valid reason arising out of the qualification or behaviours of the labourer or the requirements of the enterprise, workplace or work. The existence of the condition "seniority" is not required for the labourers employed for underground works". As per this explicit provision; in order to benefit from the job security, it is primarily necessary for those labourers to be included in the scope of the Labour Act No 4857 and have the conditions required in the Article 18 of the Labour Act.

The conditions required in the Article 18 of the Labour Act are:

- To be employed under an employment contract of indefinite duration,
- Employment of thirty or more than thirty labourers at the workplace,
- To have a seniority of at least six months,
- Not to be the employer's representative.

[9]Tankut Centel, Job Security, Legal Law Books Series 200, Istanbul 2012, 27; Narmanlıoğlu, 496.
[10]Ekonomi, 31.

II- TO BE INCLUDED IN THE SCOPE OF THE LABOUR ACT

In order to benefit from the job security system, it is primarily necessary for labourers to be included in the scope of the Labour Act No 4857.[11] Therefore, job security shall apply to the persons who are characterized as a labourer within the meaning of the Article 2 of the Labour Act and employed in the context of the labour relations and for the works not included in the scope of the Article 4 of the Labour Act.

Likewise, as per the Article 4/b of the Labour Act, since the provisions of the Labour Act shall not apply to the enterprises or workplaces where less than 50 (including 50) labourers are employed and agricultural and forestry works are carried out; those included in the scope of the Article 4/b shall not benefit from the job security provisions either.

Due to the provision contained in the last paragraph of the Article 6 of the Press Labour Act, which is: "The provisions of the Articles 18, 19, 20, 21 and 29 of the Labour Act shall apply by analogy"; those included in the scope of the Press Labour Act shall benefit from the job security provisions. However, since there is no relevant legal provision for the labourers included in the scope of the Maritime Labour Act and for the labourers included in the scope of the Turkish Code of Obligations; those included in the scope of these Acts are not entitled to benefit from job security.[12] Those labourers should also be included into the scope of job security by a legal arrangement to be issued as soon as possible. Such a legal arrangement will put an end to this meaningless discrimination made among labourers.

In practice, by the judgments of the Supreme Court of Appeals, efforts were made to surpass this exclusion of labourers employed within the scope of the Turkish Code of Obligations. In a judgment rendered by the Supreme Court of Appeals, the Supreme Court states that "According to the Article 4/1-a of the Labour Act, the provisions of this Act shall not apply to "the labourers employed for air transport works". However, the general provisions in the Code of Obligations apply since a special arrangement was not made in respect of the labourers employed for air transport works. In the present case, it is understood that the plaintiff labourer is employed as a flight staff at the defendant's business and that, however, at the business, the plaintiff benefits from the provisions of the Collective Labour Agreement which was signed with the member trade union and is in force and that, **in the Collective Labour Agreement, it is stipulated that the plaintiff shall benefit from the job security provisions, namely the Article 18 and the subsequent Articles of the Labour Act No 4857**,

[11]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 10.02.2014, File No 2011/52896, Judgment No 2014/3661, Labour and Society, 2014/4, 362; Narmanlıoğlu, 497; Kenan Tunçomağ/Tankut Centel, Principles of Labour Law, Istanbul 2013, 205.
[12] Ekonomi, 32.

and it is understood that the labour court has jurisdiction".[13] As understood from the judgment, the Supreme Court of Appeals held that a flight staff shall take the advantage of the job security-related provisions in the Labour Act in case it is stipulated by a collective labour agreement that such flight staff shall benefit from the job security provisions of the Labour Act, even though the flight staff is included in the scope of the Turkish Code of Obligations, not the Labour Act. Therefore, the persons employed for such air transport works shall benefit from the job security-related provisions of the Labour Act.

III- TO BE EMPLOYED UNDER AN EMPLOYMENT CONTRACT OF INDEFINITE DURATION

With the entry into force of the job security provisions, the distinction between employment contracts for definition duration and employment contracts for indefinite duration grows in importance.[14]This is because; by the expression "…an employer, who terminates the employment contract of indefinite duration pertaining to a labourer…" which is contained in the Article 18 of the Labour Act, it is explicitly regulated that the job security provisions shall apply to the employment contracts of indefinite duration.[15]As per this legal arrangement, job security includes a protection against time-bound termination of employment contracts of indefinite duration by employers.[16] So then, in order for a labourer to benefit from the job security provisions, it is necessary that his labour is based on an employment contract of indefinite duration and that his employment contract is terminated by his employer. The rules of job security shall not apply in cases where his employment contract terminates for a reason other termination by the employer.[17]

By the expression "…an employer, who terminates the employment contract of indefinite duration pertaining to a labourer…" which is contained in the Article 18 of the Labour Act; those who are employed under employment contracts of definite duration are expressly excluded from the scope of job security. As emphasized in the judgments rendered by the Supreme Court of Appeals, a labourer who is employed

[13]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 22.12.2008, File No 2008/40711, Judgment No 2008/34678, Çalışma ve Toplum (Labour and Society), 2009/2, Issue No: 21, 314.
[14]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 02.12.2009, File No 2008/12186, Judgment No 2009/32934, www.calismatoplum.org/sayi25/abc/10_44.pdf, 485, 486; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 10.04.2012, File No 2010/5999, Judgment 2012/12208, Labour and Society, 2013/1, 498; The Civil Chamber No 7 of the Supreme Court of Appeals, dated 31.10.2014, File No 3838, Judgment No 2014/19888, Labour and Society, 2015/4, 395; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 21.06.2010, File No 2008/35677, Judgment No 2010/19544, www.calismatoplum.org/sayi30/abc/11-56.doc, 528.
[15] The Civil Chamber No 9 of the Supreme Court of Appeals, dated 10.02.2014, File No 2011/52896, Judgment No 2014/3661,Labour and Society, 2014/4, 362.
[16]Ekonomi, 41.
[17]Süzek, 589.

under an employment contract of definite duration is not entitled to benefit from job security.[18]

In the Article 11 of the Labour Act, the term "employment contract of indefinite duration" is defined as "In cases where the labour relation is not dependent upon a definite period, the contract shall be considered as a contract of indefinite duration". In the same Article, the term "employment contract of definite duration" is defined as "An employment contract concluded between an employer and a labourer in writing for the works of definite duration or depending on objective conditions such as completion of a certain work or occurrence of a certain phenomenon, is an employment contract of definite duration. An employment contract of definite duration shall not be concluded successively more than once (in chain), without a founded reason. Otherwise, the employment contract shall be considered as a contract of indefinite duration, from the beginning. Chain employment contracts based on founded reasons shall maintain their features of being definite-termed".

In order to prevent circumvention of the job security provisions, the Labour Act stipulates existence of strict requirements as to form for validity of employment contracts of definite duration.[19]Thus, it is aimed to provide a certain protection by the rule "an employment contract of definite duration shall not be concluded successively more than once (in chain), without a founded reason" which is contained in the Article 11 of the Labour Act. This is because; an employment contract of definite duration cannot be concluded and renewed in order to exclude a labourer from job security.[20]

IV- EMPLOYMENT OF THIRTY OR MORE THAN THIRTY LABOURERS AT THE WORKPLACE

In the Act No 4773, it is stipulated that the labourers, working at workplaces where ten or more than ten labourers are employed, shall benefit from job security[21]. However, this number is increased to thirty, in the Labour Act No 4857 that was entered into force subsequently.[22] A request for annulment of the provision concerning the number of labourers, namely the number "thirty", due to unconstitutionality, was

[18] The Civil Chamber No 22 of the Supreme Court of Appeals, dated 11.4.2019, File No, 2016/10959, Judgment No 2019/8338, Kazancı; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 17.4.2019, File No 2016/2920, Judgment No 2019/9127, Kazancı; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 20.11.2003, File No 2003/19338, Judgment No 2003/19593, Employers' Journal, December 2003, 22.

[19]Narmanlıoğlu, 497.

[20]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 21.06.2010, File No 2008/35677, Judgment No 2010/19544, www.calismatoplum.org/sayi30/abc/11-56.doc, 530.

[21] Münir Ekonomi, The Speech Text of the Meeting Themed Termination of Employment Contracts and Job Security, and General Discussions, http://www.ceis.org.tr/dergiDocs/isGuvencesi.pdf, 4 et seq.

[22]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 03.07.2006, File No 2006/9818, Judgment No 2006/19560, www.calismatoplum.org/sayi12/abc/9daire/44.doc, 287.

submitted to the Constitutional Court; however, the Constitutional Court rejected this request.[23]

According to the Article 18/1 of the Labour Act, in order for a labourer to benefit from the job security provisions, it is necessary that thirty or more than thirty labourers are being employed at that workplace on the date when the notice of termination is given.[24]The stipulation to employ a specific number of labourers, which is required for the workplaces that shall be included in the scope of the job security provisions, stems from the idea of protecting small-scale workplaces, as stated in the preamble of the Act. In the ILO Convention No 158, it is stated that, in so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them. In the doctrine, it is stated that the fact that the provision of job security is not mandatory at the workplaces employing less than thirty labourers is based on the idea that small-scale workplaces with weak economic potential may not bear a costly and a long-term termination procedure. In addition, it is asserted that this limitation is appropriate by the reason that labourers should be dismissed under a more simple procedure at small-scale workplaces where personal relationships between the employer and labourers are at the forefront and the success of the work requires a harmonious and good working environment.[25]*In our opinion*, the option of dismissal without a valid reason, which is in the hands of the employer, is tried to be limited as little as possible. Given the number of labourers being employed at the workplaces in our Country, it is a known fact that a large number of workplaces are not included in the scope of job security. Despite this is the case, the introduction of an excessive number as thirty is not appropriate.

[23] The Constitutional Court, 19.10.2005, File No 2003/66, Judgment No 2005/72, OG. 24 November 2007, 26710; Mustafa Kılıçoğlu, Job Security Within the Scope of the Right to Labour, A Constitutional Approach to the Right to Labour, 5, http://www.anayasa.gov.tr/files/insan_haklari_mahkemesi/sunumlar/ym_4/KilicogluCalismaHakki.pdf; Nuri Çelik, Opinions on the Rejection by the Constitutional Court of the Request for Annulment of the Labour Act Rule Regulating the Number of Labourers, namely Thirty, as to the Scope of Job Security, Istanbul Commerce University, Journal of Social Sciences Year: 6, Issue No:12, Autumn 2007/2 p.1-6, 1 et seq.

[24]The Civil Chamber No 22 of the Supreme Court of Appeals, dated 27.04.2015, File No 2015/11474, Judgment No 2015/15140, Labour and Society, 2016/2, 1053.

[25] Please see: Çelik/Caniklioğlu/Canbolat, 475, fn. 1357.

Despite the limitation as thirty is introduced as one of the conditions to benefit from job security in our County; when other Countries are considered, it is seen that:

- There is limitation as 11 labourers in Germany and French,
- There is limitation as 5 labourers in Austria, and
- There is limitation as 15 labourers in Italy.
- In Sweden, it is seen that all labourers are included in the scope of job security.

When the number "thirty", introduced to benefit from job security is our Country, is considered depending on these Countries; it is seen that this number is excessive in our Country. In our opinion, as with the Sweden example, all labourers should be included in the scope of job security in our Country.

According to the Article 18/4 of the Labour Act; in determining the number "thirty", in case the employer has more than one workplace in the same branch of economic activity, the number of labourers being employed at the workplace shall be determined by the total number of labourers being employed at those workplaces.[26]In this context, according to the Supreme Court of Appeals, in determining the number "thirty", an organic bond between different legal entity employers is not sufficient, and the fact of joint employment should take place.[27]

In determining the number "thirty"; discrimination cannot be made among labourers employed under employment contracts of definite-indefinite duration, under full time-part time employment contracts and seasonal employment contracts[28], by the date when the notice of termination is received by the labourer, and all labourers shall be taken into consideration collectively.[29]In determining the number criterion, the word "employed" enshrined in the expression "At a workplace where thirty or more than thirty labourers are being employed" as contained in the Article 18/1 of the Labour

[26] The Civil Chamber No 9 of the Supreme Court of Appeals, dated 10.02.2014, File No 2011/52896, Judgment No 2014/3661, Labour and Society, 2014/4, 362.

[27] The Civil Chamber No 7 of the Supreme Court of Appeals, dated 14.04.2015, File No 2014/21927, Judgment No 2015/7088, Labour and Society, 2016/2, 887, 888.

[28] Çelik/Caniklioğlu/Canbolat, 479, fn. 1381.

[29]The Civil Chamber No 22 of the Supreme Court of Appeals, dated 7.5.2019, File No 2019/3314, Judgment No 2019/9926, Kazancı; The Civil Chamber No 22 of the Supreme Court of Appeals, dated 19.01.2012, File No 2011/5056, Judgment No 2012/194, Labour and Society, 2012/3, 439; The Civil Chamber No 7 of the Supreme Court of Appeals, dated 14.04.2015, File No 2014/21927, Judgment No 2015/7088, Labour and Society, 2016/2, 887; The Civil Chamber No 22 of the Supreme Court of Appeals, dated 11.02.2014, File No 2014/789, Judgment No 2014/1936, Labour and Society, 2015/2, 421; The Civil Chamber No 22 of the Supreme Court of Appeals, dated 27.04.2015, File No 2015/11474, Judgment No 2015/15140, Labour and Society, 2016/2, 1053; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 8.12.2009, File No 2009/44744, Judgment No 2009/33940, Mehmet Halis Karaman, Judgment Analysis, the Article 13 of the Labour Act No 4857, Part Time Labour, Prohibition of Discrimination, Severance Pay, Paid Annual Leave and Week-End Wage, Labour and Society, 2010/2, 269 et seq.

Act, takes into consideration of not only the labourers who are actually employed at a workplace but also the labourers who are not present at the workplace due to illness, pregnancy or occupational accident though they currently have employment relationships and whose employment contracts are suspended and who are on annual leave or on leave for other reasons.[30]According to the Supreme Court of Appeals, the effectiveness of the employment contract of the labourer, who shall be taken into consideration in determining the number "thirty" on the date when the notice of termination is given, is sufficient; and it is not necessary that the labourer is working actually. However, if a substitute labourer is, for that period, employed in substitution for the labourer who is not present at the workplace due to illness, occupational accident, pregnancy, annual leave or for similar reasons; the substitute labourer shall not be taken into consideration in determining the number "thirty". Furthermore, the employers' representatives and their assistants, who are not included in the scope of job security due to their position, should also be taken into consideration in determining the number of labourers employed at the workplace.[31]

Apprentices and trainees who are not included in the scope of the Labour Act and do not have the title "labourer", students receiving vocational education and those who are employed for non-continuous works and likewise, those who are employed under indentured (temporary) labour relations at the workplace, and labourers of a sub-employer shall not be taken into account in determining the number of labourers being employed at that workplace.[32]

In the event that a part of the labourers is indicated collusively as subcontractor's labourers in order to circumvent the job security provisions, although labourers of the sub-employer are not taken into consideration in determining the criterion "thirty labourers"; those labourers should also be included into the number of labourers. To put it more explicitly; in cases where sub-employer relationship should be considered as invalid, the labourers who are working as being affiliated with the person deemed as sub-employer should be taken into account in determining the number "thirty". The labourers of the sub-employer, and the temporary labourers, whose employment contracts (with the employer that supplies temporary labourers) are currently in force, shall be taken into account in determining this number at the workplaces of their own

[30]Ekonomi, 36.
[31]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 12.01.2015, File No 2014/29976, Judgment No 2015/38, Labour and Society, 2016/1, 426, 427; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 06.03.2014, File No 2013/10684, Judgment No 2014/7406, Labour and Society, 2015/1, 421; The Civil Chamber No 22 of the Supreme Court of Appeals, dated 27.04.2015, File No 2015/11474, Judgment No 2015/15140, Labour and Society, 2016/2, 1053; The Civil Chamber No 22 of the Supreme Court of Appeals, dated 7.5.2019, File No 2019/3314, Judgment No 2019/9926, Kazancı.
[32]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 06.03.2014, File No 2013/10684, Judgment No 2014/7406, Labour and Society, 2015/1, 421.

employers. However; the labourers, registered with those who are characterized as sender employer in a temporary employment relation by the parties but who are in fact performing activities as "payroll employer" and whose sole work is to supply labourers to their employers, should also be taken into consideration in determining the number criterion.[33]

In case a labourer, whose employment contract has been terminated before the date of the notice of termination and who has filed a lawsuit for annulment of the termination for this reason and then, in favour of whom the court has adjudged that the termination is invalid, files an application with the employer for his reemployment; this labourer should also be considered in determining the number "thirty". In such a case, if the lawsuit filed for annulment of the termination has not been concluded yet, it should be made prejudicial question and its conclusion should be awaited.[34]

Since the enterprises and workplaces, where more than fifty labourers are employed and agricultural and forestry works are carried out, are included in the scope of the Labour Act No 4857 (the Article 4/b of the Labour Act); the labourers employed by those enterprises or workplaces shall also benefit from job security. However, since the labourers who are working within the body of agricultural workplaces employing less than 50 labourers (including fifty) are not included in the scope of the Labour Act; the job security provisions shall not apply to those labourers even if more than thirty labourers (for example 40 labourers) are employed at those workplaces. In determining 50 labourers, not only the agricultural labourers but also the other labourers should be taken into consideration.[35]

As for the labour in the form of joint employment, which is a form of working that occurs particularly in group companies; a part of labourers serves concurrently and jointly for more than one employer. Those companies, who are connected to each other within the scope of mostly a management organisation, may provide services in the same buildings, and a part of the labourers fulfils their service obligations for all

[33]The Civil Chamber No 22 of the Supreme Court of Appeals, dated 7.5.2019, File No 2019/3314, Judgment No 2019/9926, Kazancı;The Civil Chamber No 9 of the Supreme Court of Appeals, dated 18.12.2009, File No 2009/247, Judgment No 2009/37746, www.calismatoplum.org/sayi25/abc/10_25.pdf, 423; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 06.03.2014, File No 2013/10684, Judgment No 2014/7406, Labour and Society, 2015/1, 421.

[34]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 12.01.2015, File No 2014/29976, Judgment No 2015/38, Labour and Society, 2016/1, 427; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 06.03.2014, File No 2013/10684, Judgment No 2014/7406, Labour and Society, 2015/1, 421; The Civil Chamber No 7 of the Supreme Court of Appeals, dated 25.09.2013, File No 2013/21752, Judgment No 2013/15487, Labour and Society, 2014/2, 220.

[35]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 06.03.2014, File No 2013/10684, Judgment No 2014/7406, Labour and Society, 2015/1, 421; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 12.01.2015, File No 2014/29976, Judgment No 2015/38, Labour and Society, 2016/1, 427.

the employers. As the examples for this matter; the same person may act as the administrative manager of all the companies, and the services "accounting, security, transportation, cleaning, cafeteria and lunch", which are provided at a workplace being used jointly by the companies, may be provided to all the employers. In such a labour relation, the labourers providing services to all the companies and the labourers providing services only to the defendant company should be taken into consideration in determining the number "thirty". If the labourer serves for all the companies, then the number of labourers at all the companies should be taken into consideration.[36]

In order that trade union workplace representatives can benefit from job security, the condition "employment of thirty labourers at a workplace" should not be required.[37] In the Article 24 of the Act on Trade Unions and Collective Labour Agreements, since this security which is referred to as a condition to benefit therefrom for the representative is directly based on the title "representative"; it is singly sufficient for the labourer to have this title. The number of labourers employed at the workplace and **the existence of his seniority of at least six months shall not be taken into consideration** additionally.[38]

In the Article 18/4, it is regulated that, in case the employer has more than one workplace in the same branch of economic activity, the number of labourers being employed at the workplace shall be determined by the total number of labourers being employed at those workplaces[39]; however, in the same Article, the legislator did not introduce an explicit legal arrangement on whether or not the labourers working at the workplaces in the same branch of economic activity **in foreign countries** shall be taken into consideration. There is no legal arrangement stating that the workplaces in the same branch of economic activity shall be considered within the framework of the borders of the Country only. So then, by acting in favour of labourers and if the

[36]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 12.01.2015, File No 2014/29976, Judgment No 2015/38, Labour and Society, 2016/1, 427, 428; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 06.03.2014, File No 2013/10684, Judgment No 2014/7406, Labour and Society, 2015/1, 422; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 18.12.2009, File No 2009/247, Judgment No 2009/37746, www.calismatoplum.org/sayi25/abc/10_25.pdf, 424.

[37]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 21.07.2008, File No 2008/25552, Judgment No 2008/20932, www.calismatoplum.org/sayi21/abc/8.pdf, 171; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 06.03.2014, File No 2013/10684, Judgment No 2014/7406, Labour and Society, 2015/1, 422; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 12.01.2015, File No 2014/29976, Judgment No 2015/38, Labour and Society, 2016/1, 428; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 09.05.2013, File No 2013/5859, Judgment No 2013/14013, Labour and Society, 2013/4, 524.

[38]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 21.07.2008, File No 2008/25552, Judgment No 2008/20932, www.calismatoplum.org/sayi21/abc/8.pdf, 171; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 06.03.2014, File No 2013/10684, Judgment No 2014/7406, Labour and Society, 2015/1, 422.

[39]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 20.03.2006, File No 2006/3816, Judgment No 2006/7013,www.calismatoplum.org/sayi10/abc/9.daire/46.doc, 245.

employer has other workplaces in foreign countries provided that the workplaces are in the same branch of economic activity; the number "thirty" should be determined by taking into consideration of all the workplaces belonging to the employer.[40]

In the Act; the rule (the rule as to the minimum number of labourers), requiring employment of thirty or more than thirty labourers at a workplace for the implementation of the job security provisions, is of a relative mandatory nature, and it may be modified in favour of labourers. Therefore, contract provisions requiring a less number of labourers shall be valid,[41] and contract provisions, which state that the job security provisions shall apply regardless of the number of labourers, are valid as well.[42] Therefore, at the workplaces where a less number of labourers are employed, the parties to the contract may agree that this relative mandatory rule should not apply.[43]

To mention, despite employment of at least thirty labourers at a workplace is also required at the time of termination of an employment contract; for instance, at the time when six of thirty-five labourers employed at the workplace are dismissed, the employer may argue that the labourers are not any more included in the scope of job security, by claiming that twenty-nine labourers were working at the workplace at that time. However, since it is possible for the dismissed six labourers of those thirty-five labourers to file a lawsuit within one month as from the date when the notice of termination is given and thereby, request for annulment of the termination and for their reemployment; the labourers, whose employment contracts have been terminated within the one month-term as from that date, should be taken into consideration in determining the number of labourers being employed at the workplace.[44]

Determining the number of labourers being employed at a workplace, namely the number "thirty" concerns the public order, and it should be investigated ex officio. Therefore, it is not required for the parties to submit a request in this matter. The Court should order the Regional Directorate of Labour and the Social Security Institution to

[40]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 03.07.2006, File No 2006/9818, Judgment No 2006/19560, www.calismatoplum.org/sayi12/abc/9daire/44.doc, 288; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 12.02.2007, File No 2006/32297, Judgment No 2007/3272, www.calismatoplum.org/sayi15/abc/56.doc, 330.
[41]The Civil Chamber No 22 of the Supreme Court of Appeals, dated 11.02.2014, File No 2014/789, Judgment No 2014/1936, Labour and Society, 2015/2, 421.
[42]" The Civil Chamber No 9 of the Supreme Court of Appeals, dated 22.02.2010, File No 2010/4905, Judgment No 2010/4260, www.calismatoplum.org/sayi26/abc/10_3.pdf, 258.
[43]" The Civil Chamber No 22 of the Supreme Court of Appeals, dated 19.01.2012, File No 2011/5056, Judgment No 2012/194, Labour and Society, 2012/3, 439.
[44]Cevdet İlhan Günay, Legal Problems in and Recommendations for the Practise of Job Security, 155, http://www.kamu-is.org.tr/pdf/OGC6.pdf.

declare the number of labourers employed by the date of the termination, and should reach a conclusion by hearing witnesses in this matter, if necessary.[45]

V- SENIORITY OF AT LEAST SIX MONTHS

According to the Article 18/1 of the Labour Act, in order for a labourer to benefit from the job security provisions, another condition is "to have a seniority of at least six months at the workplace". Under the legal arrangement made on 10/09/2014 with respect to the condition "seniority", the existence of the condition "seniority" is not required for the labourers employed for underground works" (the Article 18/1 of the Labour Act). The six- month seniority of the labourer shall be calculated by merging the periods elapsed at one workplace or at various workplaces of the same employer (the Article 18/4 of the Labour Act). The six-month seniority, which is called as waiting period, is a time period which is fixed as the upper limit for the labourer and introduced in the interest of the employer in order that the employer tries the labourer and sees his qualifications and his adaptation to the work and the working environment within this period and that he reinforces his knowledge.[46]

In the calculation of the labourer's six-month seniority period, it is necessary that his seniority based on the labour relation is at least six months at the workplace or the workplaces belonging to the same employer on the date when the notice of termination is given, even if his labour relation lasted interruptedly. This is because; since such a condition is not introduced in the Act, even if his labour relation has, in legal terms, been interrupted at one workplace or various workplaces of the same employer, the labourer's service periods elapsed at the workplaces affiliated with that employer shall be merged. However, the periods elapsed at different workplaces shall be merged, provided that the employer of those workplaces is the same. As to the calculation of the six-month seniority, since a provision is not explicitly contained differently from the provision concerning the criterion of thirty labourers; it is not mandatory that the workplaces, where the labourer was employed previously, are in the same branch of economic activity.[47]

The trial and the suspended periods shall also be included into the calculation of the labourer's six-month seniority. In other words, the de facto working periods shall not, on an absolute basis, be required in this calculation. The periods stated in the Article 66 of the Labour Act shall be taken into consideration in the calculation of the six-

[45]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 8.5.2006, File No 2006/10023, Judgment No 2006/13003, Günay, 155.
[46] Ekonomi, 42, fn. 77.
[47]The Civil Chamber No 7 of the Supreme Court of Appeals, dated 14.10.2014, File No 12921, Judgment No 2014/18766, Labour and Society, 2015/4, 433; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 15.10.2010, File No 2009/30688, Judgment No 2010/29172, www.calismatoplum.org/sayi29/abc/11-17.pdf, 401.

month seniority. So then, the cases deemed as working period stated in the Article 66 of the Labour Act shall be taken into consideration in the calculation of the six-month seniority. In order for the labourer to benefit from the provisions protecting him against termination; it is mandatory for the labourer to have elapsed his six-month seniority period before the same employer, within the labour relation based on his employment contract.[48]

During the six-month period, the valid reasons regulated in the Article 18 shall not be required in the termination of the employment contract. It is possible to terminate the employment contract by way of a time-bound termination. However, in order to impede the labourer to benefit from the job security provisions, in case the employer terminates the employment contract in advance of a few days to the expiration of the six-month period; this termination may be rendered invalid by the reason that it is in violation of the rule "objective good faith".[49]

Under an individual employment contract or under a collective labour agreement, it is possible to shorten or entirely revoke the six-month period. This is because; the relevant provision is of a relative mandatory nature. In the event that the employer terminates the employment contract upon the employer pays in advance the labourer's salary corresponding to the notice period; it is not possible to complete this period with the notice periods stated in the Article 17.[50]

Since the date when the labourer has actually started working, not the conclusion date of the employment contract, is considered for the start of the seniority in respect of the severance pay and the paid annual leaves, in the rights for which seniority is taken as basis; it will be appropriate to take into consideration of the starting date of employment in respect of the commencement of the seniority concerning job security as well. In case the employer lapses into default in the acceptance of the employment or in case the labourer becomes ill; these cases do not constitute an impediment against the start of the seniority period, and the seniority period shall nevertheless start to run. However, if the labourer starts working late in a faulty manner; the date when the

[48]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 15.10.2010, File No 2009/30688, Judgment No 2010/29172, www.calismatoplum.org/sayi29/abc/11-17.pdf, 399, 400; Öner Eğrenci, Judgment Analysis, Labour and Society, 2004/1, 100.
[49]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 15.10.2010, File No 2009/30688, Judgment No 2010/29172, www.calismatoplum.org/sayi29/abc/11-17.pdf, 400.
[50]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 22.4.2019, File No, 2018/10524, Judgment No 2019/9450, Kazancı; The Civil Chamber No 7 of the Supreme Court of Appeals, dated 14.10.2014, File No 12921, Judgment No 2014/18766, Labour and Society, 2015/4, 433, 434; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 15.10.2010, File No 2009/30688, Judgment No 2010/29172, www.calismatoplum.org/sayi29/abc/11-17.pdf, 400.

labourer has actually started working should be considered as the date when the six-month period has started.[51]

Since it is provided for by the Act that the labourers with six-month seniority shall benefit from job security; it is mandatory that this period has expired on the date when the notice of termination was received by the labourer. The fact that the period shall expire eventually following the notice terms does not suffice to benefit from the security.[52]

This period should entirely elapse on the basis of an employment contract. In this respect, it is necessary that the condition "six-month seniority" required by the Act is understood as "six-month workmanship seniority". Therefore, the periods elapsed prior to the labourer's labour relation with the employer, the periods elapsed during the labourer's representation or partnership relations with the employer should not be taken into consideration in the calculation of this period.[53]

Given the Article 7 of the Labour Act; the six-month seniority of a labourer employed under an indentured (temporary) labour relation, his period elapsed under the command of another employer (the lendee) shall be deemed to have elapsed under the command of the employer (the lender). In case this employer is subsequently employed within the scope of a new labour relation at the workplace of the lendee employer; the periods, which have elapsed within the scope of the indentured labour relation at that employer, shall not be taken into consideration in the calculation of the six-month seniority period in the new labour relation.[54]

Since the apprenticeship relation is referred to among the exceptions in the Article 4 of the Labour Act; it is not taken into consideration in the calculation of the six-month seniority period. However, the period elapsed while the labourer was a trainee shall be taken into consideration in the calculation of the seniority period, in case the

[51]The Civil Chamber No 7 of the Supreme Court of Appeals, dated 14.10.2014, File No 12921, Judgment No 2014/18766, Labour and Society, 2015/4, 434, The Civil Chamber No 9 of the Supreme Court of Appeals, dated 15.10.2010, File No 2009/30688, Judgment No 2010/29172, www.calismatoplum.org/sayi29/abc/11-17.pdf, 400.

[52]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 15.10.2010, File No 2009/30688, Judgment No 2010/29172, www.calismatoplum.org/sayi29/abc/11-17.pdf, 400; The Civil Chamber No 7 of the Supreme Court of Appeals, dated 14.10.2014, File No 12921, Judgment No 2014/18766, Labour and Society, 2015/4, 434.

[53]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 15.10.2010, File No 2009/30688, Judgment No 2010/29172, www.calismatoplum.org/sayi29/abc/11-17.pdf, 400; The Civil Chamber No 7 of the Supreme Court of Appeals, dated 14.10.2014, File No 12921, Judgment No 2014/18766, Labour and Society, 2015/4, 434.

[54]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 15.10.2010, File No 2009/30688, Judgment No 2010/29172, www.calismatoplum.org/sayi29/abc/11-17.pdf, 400.

internship has taken place within the scope of a labour relation in the meaning of the Article 2/1 of the Labour Act.[55]

According to the Article 6/2 of the Labour Act, in the case of workplace transfer[56], since the transferee employer is, for the rights concerning the labourer's service period, obliged to carry out the relevant transactions by considering the date when the labourer has started working under the command of the transferor employer; his six-month seniority period shall not be affected by such a change occurred in the employer upon transfer. In this context, in case a workplace is invested as a capital for a company by its employer; this case should also be considered as a workplace transfer within the meaning of the Article 6 of the Labour Act, and the seniority periods should be calculated together.[57]

Since the provision requiring the condition "six-month seniority" is not, according to the last paragraph of the Article 21 in the Labour Act, referred to among the provisions, the contrary of which shall not be agreed; it should be accepted that the contract provisions which shorten or entirely revoke this period are valid.[58]

In order for trade union workplace representatives to benefit from job security, the condition "six-month seniority" should not be required. In the Article 24 of the Act on Trade Unions and Collective Labour Agreements, since this security which is referred to as a specific condition to benefit therefrom for the representative, is directly based on the title "representative"; it is singly sufficient for the labourer to have this title.[59]

VI- NOT TO BE THE EMPLOYER'S REPRESENTATIVE

In order for a labourer to benefit from the job security provisions in accordance with the Article 18 of the Labour Act No 4857, it is necessary for that labourer not to be in the position of the employer's representative or his assistants directing and managing the entire enterprise or not to be in the position of the employer's representative who

[55]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 15.10.2010, File No 2009/30688, Judgment No 2010/29172, www.calismatoplum.org/sayi29/abc/11-17.pdf, 400.
[56]Ercümet Özkara, Impact of Workplace Transfers on Employment Contracts and Legal Responsibility of Employers, Istanbul 2008, 272, 273.
[57]The Civil Chamber No 7 of the Supreme Court of Appeals, dated 14.10.2014, File No 12921, Judgment No 2014/18766, Labour and Society, 2015/4, 434.
[58]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 15.10.2010, File No 2009/30688, Judgment No 2010/29172, www.calismatoplum.org/sayi29/abc/11-17.pdf, 401.
[59] The Civil Chamber No 9 of the Supreme Court of Appeals, dated 06.03.2014, File No 2013/10684, Judgment No 2014/7406, Labour and Society, 2015/1, 422; The Civil Chamber No 9 of the Supreme Court of Appeals, dated 15.10.2010, File No 2009/30688, Judgment No 2010/29172, www.calismatoplum.org/sayi29/abc/11-17.pdf, 401.

direct and manage the entire workplace and has the power to recruit and dismiss labourers.

Given the fact that the employer's representatives who are not entitled to benefit from job security, are, first of all, those and their assistants directing and managing the entire enterprise; the general managers and the vice general managers directing and managing the entire enterprise shall not benefit from the job security provisions.[60] Even if the vice general managers may come to mind as "assistant of employer's representative"; the persons, such as department head, personnel manager and accounting manager, may also be considered as "assistant" depending on the circumstances of the concrete case.[61] According to the Supreme Court of Appeals; a vice general manager responsible for administrative and financial affairs[62], a vice general manager responsible for financial and commercial affairs,[63] a vice general manager for sales and marketing[64], a vice general manager of a bank[65] are the assistants of employer's representative. However, we should state that the use of the title "general manager" or "vice general manager" at a workplace does not singly result in exclusion from the scope of job security. What matters is that whether or not he is granted the power of representation and whether or not he manages the entire enterprise; in this respect, it is necessary to consider his job definition and his position.

The employer's representatives, who manage the entire workplace, not the entire enterprise and have the power to recruit and dismiss labourers, constitute the second group of the employer's representatives who are not entitled to benefit from job security. Accordingly, while those directing and managing the entire enterprise are deemed as employer's representative without requiring another condition; the condition "to have the power to recruit and dismiss labourers" is additionally required in order that those managing the entire workplace, not the entire enterprise, can be deemed as employer's representative within the meaning of the Article 18. Management and direction of the entire workplace and the power to recruit and dismiss labourers are required together. Such workplace may also be the one affiliated with that enterprise. Therefore, if a branch manager of a bank or a factory manager directs or manages the workplace but if they do not, with their free wills, have the

[60]The Civil Chamber No 22 of the Supreme Court of Appeals, dated 23.01.2014, File No 2013/37538, Judgment No 2014/807, Labour and Society, 2014/3, 494.
[61]Seracettin Göktaş, Job Security of Employer's Representative, Labour and Society, 2009/1, 67.
[62]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 30.6.2008, 2007/42691–2008/18147, please see: Göktaş, 67.
[63]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 19.9.2005, 25398-30349, please see: Göktaş, 67.
[64]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 26.2.2007, 2006/33876–2007/5310, please see: Göktaş, 67.
[65] The Civil Chamber No 9 of the Supreme Court of Appeals, dated 24.12.2007, 29439–38318, please see: Göktaş, 67.

power to recruit and dismiss labourers; they shall not be deemed as employer's representative within the meaning of the Article 18 in the Labour Act. So, they shall benefit from job security. Likewise, since a human resources manager and a personnel manager, who have the power to recruit and dismiss labourers, do not manage the entire workplace; they are entitled to benefit from the job security provisions. However, at a workplace affiliated with the enterprise; a labourer, who directs and manages the whole of that workplace and additionally, has the power to recruit and dismiss labourers, is not entitled to benefit from the job security provisions.[66]

So then, given the fact that the employer's representatives who are not entitled to benefit from job security, are, first of all, those and their assistants directing and managing the entire enterprise; the general managers and the vice general managers directing and managing the entire enterprise shall not benefit from the job security provisions. However, we should state that the use of the title "general manager" or "vice general manager" at a workplace does not singly result in exclusion from the scope of job security. What matters is that whether or not he is granted the power of representation and whether or not he manages the entire enterprise; in this respect, it is necessary to consider his job definition and his position. The existence of the power to direct and manage the entire enterprise may be determined by considering the organization chart of the enterprise and the provisions contained in the employment contract and in the personnel regulations.[67]

VII- CONCLUSION

The labourers employed under employment contracts of definite duration are excluded from the scope of the job security system. At the expiration of the contract term of a labourer employed under an employment contract of definite duration, he becomes unemployed. By the exclusion of the labourers with employment contracts of definite duration, from the scope of the scope of the security; an inequality occurs between the labourers employed under employment contracts of indefinite duration and the labourers employed under employment contracts of definite duration.

The security system introduced by the Article 18 of the Labour Act covers the labourers working at the workplaces where thirty or more than thirty labourers are being employed, and it also introduces the condition that those labourers have at least a seniority of six months. Due to this provision, small-scale workplaces and the labourers who have worked for a period of time less than six months cannot benefit

[66]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 14.09.2009, File No 2008/41688, Judgment No 2009/22728, http://www.calismatoplum.org/sayi25/abc/10_12.pdf, 358, 359; The Civil Chamber No 7 of the Supreme Court of Appeals, dated 10.07.2013, File No 2013/19137, Judgment No 2013/13064, Labour and Society, 2014/1, 352.

[67]The Civil Chamber No 9 of the Supreme Court of Appeals, dated 01.02.2010, File No 2009/13573, Judgment No 2010/1817, www.calismatoplum.org/sayi26/abc/10_28.pdf, 364.

from job security, and many labourers are excluded from the job security system. If a right is introduced in the working life, such right should apply to the labourers equally. The exclusion of labourers from the scope of the job security system by the introduced limitations is not compatible with the principle "the protection of labourers" which is dominant in the Labour Law. It is necessary that this inequality among labourers is removed.

The Article 2/5 of the Convention No 158 is indicated as the ground of these aggravated conditions introduced to benefit from job security. On the basis of this legal arrangement, despite it is stated that small-scale workplaces with weak economic potential will not be able to bear a long-term termination procedure as well as the heavy burden to be brought by job security, and despite it is stated that such conditions may be introduced in order that the close and harmonious working environment, arising from the joint labour between labourers and employers, is not disrupted; such opinion is not so convincing.

The Supreme Court of Appeals rendered the judgments that these limitations enshrined in the Article 18 of the Labour Act are of relative mandatory nature and thereby, paved the way for the application of the job security system to a larger circle as well. Furthermore, in the system of collective labour agreements; the provisions, which will surpass the limitations introduced by the Article 18 of the Labour Act, may be included by the parties into collective labour agreements as per the autonomy of collective labour agreements, if the parties so wish.[68]

In order to resolve this serious problem in the working life; the application of the job security-provisions directly to all the labourers will be the most appropriate solution, rather than looking for a solution by way of collective labour agreements or the judgments rendered by the Supreme Court of Appeals.

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[68] Centel, 53; Ekonomi, 23.

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