ARBITRATION IN INDIVIDUAL LABOR DISPUTES[*]

Bireysel İş Uyuşmazlıklarında Tahkim

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Abstract

Individual labor disputes need to be resolved quickly, enabling employees in economically weaker positions to access their rights promptly within the employment relationship. Delays in resolving labor disputes due to the high workload of courts increase the importance of alternative dispute resolution methods. Arbitration, one of these methods, is regulated in a limited manner for individual labor disputes. It is acknowledged that arbitration can only be resorted to for claims limited to the invalidity of termination. However, it is accepted that an arbitration agreement can be made during the period when the employer's authority over the employee and the employee's dependency on the employer are eliminated. Therefore, a valid arbitration agreement can only be made after the termination of the employment contract. In this case, arbitration can only be resorted to in a very limited manner. At this point, sufficient efficiency and benefit are not achieved through arbitration. To ensure the quick resolution of labor disputes without allowing the parties to abuse the process and without harming their rights, arbitration under the supervision and authority of an institutional structure can be effectively implemented.

Keywords: Labor Dispute, Arbitration, Alternative Dispute Resolution, Suitability for Arbitration

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Özet

Bireysel iş uyuşmazlıklarının hızlı şekilde çözümlenmesi, iş ilişkisinde ekonomik bakımdan zayıf konumda olan işçinin haklarına kısa sürede ulaşması bakımından önem arz eder. Mahkemelerin iş yükünün fazla olması nedeniyle iş uyuşmazlıklarının çözülmesinde yaşanan gecikmeler, mahkeme dışı çözüm yollarının önemini artırmaktadır. Bu yollardan biri olan tahkim, bireysel iş uyuşmazlıkları bakımından sınırlı şekilde düzenlenmiştir. Yalnızca feshin geçersizliğine yönelik talepler ile sınırlı olmak üzere tahkim yoluna başvurulabileceği kabul edilmektedir. Bununla beraber işverenin işçi üzerindeki otoritesinin ve işçinin işverene bağımlılığının ortadan kalktığı kabul edilen dönemde tahkim sözleşmesi yapılabileceği kabul edilmektedir. Buna göre ancak iş sözleşmesinin sona ermesinden sonra geçerli bir tahkim sözleşmesi yapılabilir. Bu durumda oldukça sınırlı şekilde tahkim yoluna başvurulabilmektedir. Gelinen noktada, tahkimden yeterli verim ve fayda sağlanamamaktadır. Taraflara kötüye kullanma imkânı tanımadan, tarafların hakları zarar görmeden iş uyuşmazlıklarının kısa sürede çözülmesini sağlamak üzere kurumsal bir yapının denetimi ve otoritesi altında tahkim yolu etkin şekilde uygulanabilir.

Anahtar Kelimeler: İş Uyuşmazlığı, Tahkim, Alternatif Çözüm Yöntemi, Tahkime Elverişlilik

Introduction

Disputes that arise between parties are primarily resolved in state-established courts. However, alternative dispute resolution methods exist alongside court litigation. These alternative methods offer various advantages when effectively employed in resolving disputes compared to traditional court proceedings. Therefore, parties may prefer resorting to these methods to settle their disputes. One such method is "arbitration". In certain cases, concerning private law disputes, arbitration provides the opportunity for resolution through private arbitrators instead of courts[1]. Advantages such as shorter process duration, fewer procedural formalities, the presence of expert arbitrators, and emphasis on confidentiality make arbitration an appealing option compared to court litigation[2].

The rapidly increasing number of employment disputes is leading to a continuous escalation of the already heavy workload of employment courts. This situation poses a significant obstacle to the timely resolution of disputes. To alleviate the burden on courts, mediation has been introduced as a prerequisite

1 Hakan Pekcanıtez and Ali Yeşilırmak, *Medenî Usûl Hukuku Cilt III* (15th edn On İki Levha 2017) 2594; Hakan Pekcanıtez, Oğuz Atalay and Muhammet Özekes *Medenî Usûl Hukuku* (11th edn On İki Levha 2023) 613

2 Pekcanıtez and Yeşilırmak (n 1) 2603,2604; Nuray Ekşi *Hukuk Muhakemeleri Kanunu'nda Tahkim* (2nd edn Beta 2019) 12; İbrahim Özbay and Yavuz Korucu *Hukuk Muhakemeleri Kanunu Çerçevesinde Tahkim* (Adalet 2016) 26 vd.

for litigation in employment disputes. However, due to the low settlement rates during mandatory mediation, disputes continue to reach the courts, thus rendering mediation ineffective in reducing the workload of the courts. Therefore, it is crucial for parties in employment disputes to consider alternative dispute resolution methods by their own volition.

Article 20 of Labor Law No. 4857[3] regulates the possibility for parties, both employees and employers, to resort to arbitration, in addition to court litigation, limited to reinstatement cases in individual employment disputes. The Supreme Court (*Yargıtay*) has ruled that arbitration agreements made after the termination of an employment contract can only be applied to individual employment disputes related to job security. The limitation of arbitration as provided in the law, both in terms of the subject matter of disputes and the timing of agreements, has sparked debates in legal doctrine regarding its appropriateness in reducing the workload of the courts.

This study first briefly examines the concept of arbitration, types of arbitration, arbitration agreements, and the suitability for arbitration. Subsequently, it discusses the types of employment disputes, the regulation of arbitration in individual employment disputes, the suitability of resolving these disputes through arbitration, and evaluates arbitration agreements in individual employment disputes, as well as mandatory arbitration in employment contracts. Finally, the study investigates the practices of Consumer Arbitration Boards and Insurance Arbitration Committees, which could serve as examples for establishing a framework for arbitration in individual employment disputes.

I. ARBITRATION IN GENERAL

A. CONCEPT OF ARBITRATION

Arbitration is the resolution of disputes between parties through private arbitrators instead of courts, facilitated by an arbitration agreement[4]. It entails impartial and independent arbitrators making final and binding decisions on existing or potential disputes arising from contractual or non-contractual private law relationships, which parties can resolve by their own free will[5].

Article 412/1 of Civil Procedure Law No. 6100[6] and Article 4/1 of International

[3] Official Gazette of the Republic of Turkey 10.06.2003/25134

[4] Baki Kuru *Hukuk Muhakemeleri Usulü Cilt 6* (6th edn Demir Demir 2001) 5875; Pekcanıtez and Yeşilırmak (n 1) 2593; Pekcanıtez, Atalay and Özekes (n 1) 613; Murat Atalı, İbrahim Ermenek and Ersin Erdoğan, *Medenî Usûl Hukuku* (6th edn Yetkin 2023) 735; Vahit Doğan *Milletlerarası Özel Hukuk* (7th edn Savaş 2021) 165

[5] Kuru (n 4) 5875; Atalı, Ermenek and Erdoğan (n 4) 735; Özbay and Korucu (n 2) 3; M Serdar Özbek *Alternatif Uyuşmazlık Çözümü* (3rd edn Yetkin 2013) 119

[6] Official Gazette of the Republic of Turkey 04.02.2011/27835

Arbitration Law No. 4686[7] define arbitration in a similar manner. According to these provisions, arbitration is a method whereby parties agree to submit all or part of their disputes arising from a contractual or non-contractual legal relationship, existing or potential, to an arbitrator or arbitral tribunal for resolution. Decisions rendered at the conclusion of the arbitration process constitute final judgments and are enforceable, akin to court judgments[8].

The legal nature of arbitration is a subject of debate in legal doctrine, concerning whether it constitutes an alternative dispute resolution method or a judicial dispute resolution mechanism. According to one viewpoint, arbitration constitutes a distinct judicial activity wherein private law disputes are adjudicated by independent and impartial arbitrators[9]. This adjudicatory process is subject to oversight by the state[10]. The role of arbitrators is to adjudicate disputes arising from substantive legal relationships between parties in a manner like courts[11]. Despite being a method conducted outside the realm of state judiciary, arbitration differs from other alternative dispute resolution methods such as non-binding mediation and conciliation due to the arbitrators' authority to render final and binding decisions, making it a distinct avenue of independent adjudication outside of alternative dispute resolution mechanisms[12].

According to another viewpoint, arbitration is considered an alternative dispute resolution method distinct from judicial proceedings[13]. In this perspective, arbitration should be recognized as an alternative dispute resolution method since it typically operates based on the parties' choice and their voluntary engagement, differing from court litigation[14].

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7 Official Gazette of the Republic of Turkey 05.07.2001/24453

8 Pekcanıtez and Yeşilırmak (n 1) 2594; For detailed information on the finality effect of arbitration decisions, see. Ersin Erdoğan, *Hakem Kararlarının Kesin Hüküm Etkisi* (Yetkin 2017)

9 Pekcanıtez and Yeşilırmak (n 1) 2593; Cemal Şanlı, Emre Esen and İnci Ataman Figanmeşe *Milletlerarası Özel Hukuk* (8th edn Beta 2020) 674; Atalı, Ermenek and Erdoğan (n 4) 735; Özbay and Korucu (n 2) 17

10 Pekcanıtez and Yeşilırmak (n 1) 2594; Atalı, Ermenek and Erdoğan (n 4) 735

11 Süha Tanrıver 'Hukuk Uyuşmazlıkları Bağlamında Alternatif Uyuşmazlık Çözüm Yolları ve Özellikle Arabuluculuk' (2006) (64) Türkiye Barolar Birliği Dergisi 171; Ramazan Arslan, Ejder Yılmaz, Sema Taşpınar Ayvaz and Emel Hanağası, *Medenî Usul Hukuku* (9th edn Yetkin 2023) 820

12 Resul Kurt, 'İş Yargısında Arabuluculuk' (2018) 135 Türkiye Barolar Birliği Dergisi 412; Atalı, Ermenek and Erdoğan (n 4) 735; Erkan Küçükgüngör 'Spor Hukuku Uyuşmazlıklarında Tahkim ve Alternatif Çözüm Yöntemleri' (2004) 22 (4) Banka ve Ticaret Hukuku Dergisi 48

13 Özbek (n 5) 119; Zeynep Şişli 'Bireysel İş Uyuşmazlıkları ve Yargısal Çözüm' (2012) (2) Ankara Barosu Dergisi 57; Aydın, Buğra 'Bireysel İş Uyuşmazlıkları ve Tahkim' (2015) Mehmet Akif Aydın'a Armağan 840

14 Asiye Şahin Emir, 'İş Sözleşmesinde Yer Alan Tahkim (Özel Hakem) Şartının Geçerlilik Sorunu' (2020) 22 (2) Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi 908

B. TYPES OF ARBITRATION

Arbitration is subject to classification based on certain characteristics. Essentially, arbitration is a process initiated by the agreement of parties to resolve their disputes through this method[15]. When parties decide to resolve disputes through arbitration instead of court litigation for matters subject to their free will, it constitutes "*voluntary arbitration*"[16]. Conversely, "*mandatory arbitration*" arises when resorting to arbitration is a legal requirement, barring parties from initiating court proceedings[17]. For instance, in employment disputes, Law No. 6356 on Trade Unions and Collective Labor Agreements[18] may mandate arbitration for collective interest disputes, empowering the High Arbitration Board.

The distinction between institutional and ad hoc arbitration does not hinge on whether the process is administered by a specific institution or according to procedural rules. Institutional arbitration refers to proceedings conducted under the rules and oversight of a designated institution, with secretarial support[19], such as ISTAC (Istanbul Arbitration Centre), ITOTAM (Istanbul Chamber of Commerce Arbitration and Mediation Centre), ICC (International Chamber of Commerce), and ICSID (International Centre for Settlement of Investment Disputes). Conversely, ad hoc arbitration occurs when a temporary arbitral tribunal, formed by the parties without selecting an arbitration institution, administers the process[20], which may offer advantages in terms of confidentiality despite requiring more cooperation between the parties[21].

Arbitration is also classified based on the presence or absence of a foreign element. If arbitration does not involve any foreign element, it is referred to as domestic arbitration. Provisions governing domestic arbitration are outlined between Articles 407 and 444 of Law No. 6100 on Civil Procedure. On the other hand, if arbitration involves a foreign element, it is termed as international arbitration[22]. The foreign element is determined based on factors connecting a legal relationship or event with multiple legal systems, typically identified from

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15 Arslan, Yılmaz, Taşpınar Ayvaz and Hanağası (n 11) 820

16 Kuru (n 4) 5918; Pekcanıtez and Yeşilırmak (n 1) 2613; Süha Tanrıver, *Medenî Usûl Hukuku Cilt II* (Yetkin 2021) 335; Özbay and Korucu (n 2) 18

17 Kuru (n 4) 5876; Tanrıver, Usul Hukuku (n 16) 334; Arslan, Yılmaz, Taşpınar Ayvaz and Hanağası (n 11) 820; Özbay and Korucu (n 2) 18

18 Official Gazette of the Republic of Turkey 07.11.2012/28460

19 Pekcanıtez and Yeşilırmak (n 1) 2612; Tanrıver, Usul Hukuku (n 16) 337; Şanlı, Esen and Ataman Figanmeşe (n 9) 679; Ziya Akıncı, *Milletlerarası Tahkim* (5th edn Vedat 2020) 6; Doğan (n 4) 166; Özbay and Korucu (n 2) 23

20 Pekcanıtez and Yeşilırmak (n 1) 2612; Tanrıver, Usul Hukuku (n 16) 338; Şanlı, Esen and Ataman Figanmeşe (n 9) 678; Doğan (n 4) 166; Özbay and Korucu (n 2) 21

21 Pekcanıtez and Yeşilırmak (n 1) 2612

22 Akıncı (n 19) 74; Tanrıver, Usul Hukuku (n 16) 341; Özbay and Korucu (n 2) 20

elements related to the essence of the dispute. Factors such as the parties' places of residence, locations of their workplaces, the place of arbitration, the place of performance, the place most closely associated with the contract, the presence of foreign capital or foreign credit, and international movement of goods and capital are considered in determining the foreign element[23]. In disputes involving a foreign element where Turkey is designated as the place of arbitration or where the provisions are selected by the parties or the arbitral tribunal, Law No. 4686 on International Arbitration is applicable (Article 1 of Law No. 4686).

C. ARBITRATION AGREEMENT

The foundation of the arbitration procedure lies in the arbitration agreement entered by the parties' free will, whereby they opt for the resolution of their dispute by private arbitrators instead of state judiciary[24]. The arbitration agreement, also known as an arbitration clause, is a pact between the parties to submit all or part of their existing or potential disputes arising from a contractual or non-contractual legal relationship to an arbitrator or arbitral tribunal (Article 412/1 of Law No. 6100 on Civil Procedure, Article 4/1 of Law No. 4686 on International Arbitration). The arbitration agreement can be incorporated into the main contract by including an arbitration clause or can be concluded separately (Article 4/1 of Law No. 4686 on International Arbitration).

The arbitration agreement or clause must be in writing[25]. With advancements in communication technologies, the written form requirement has been flexibly adapted to include electronic agreements, which are deemed valid. Consequently, the arbitration agreement can be concluded through communication means or electronic platforms between the parties. Moreover, the absence of objection from the defendant regarding the existence of a written arbitration agreement asserted in the statement of claim is considered sufficient proof of the existence of the arbitration agreement. Additionally, referring to a document containing an arbitration clause to incorporate it as part of the main contract also constitutes the conclusion of an arbitration agreement (Article 412/3 of Law No. 6100, Article 4/2 of Law No. 4686).

Parties may agree to resort to arbitration either before or after the emergence of a dispute[26]. For a valid arbitration agreement to exist, there must be a clear

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23 Akıncı (n 19) 74

24 Pekcanıtez and Yeşilırmak (n 1) 2594; Akıncı (n 19) 126; Şanlı, Esen and Ataman Figanmeşe (n 9) 675; Sibel Özel, *Milletlerarası Ticari Tahkimde Kanunlar İhtilafı Meseleleri* (Legal 2008) 31

25 For detailed information on the requirement of written form, see. Banu Şit 'Tahkim Anlaşmasının Şekli: Yazılı Şekil Şartı ve İnternet Aracılığı ile Akdedilen Tahkim Anlaşmaları' (2005) 25 (1-2) Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni 411-436

26 Akıncı (n 19) 133; Ekşi (n 2) 72

and unequivocal expression of the parties' intention to submit to arbitration. The parties' intention to resort to arbitration must be unequivocal, leaving no room for doubt[27]. Therefore, the arbitration agreement has a negative effect on the parties' ability to resort to court[28].

Since arbitration is generally based on the parties' free will, they can freely determine the procedural rules applicable to the arbitration agreement, the substantive legal rules applicable to the essence of the dispute, the number of arbitrators (Article 415 of Law No. 6100 on Civil Procedure), their qualifications, the method of appointment (Article 416/1), their powers, the place of arbitration (Article 425/1), the language of proceedings, and the system of evidence, including procedural matters (Article 424)[29].

D. SUITABILITY FOR ARBITRATION

For a dispute to be resolved through arbitration, it must be suitable for arbitration. Article 408 of Law No. 6100 on Civil Procedure stipulates that disputes over real rights on immovable properties and disputes arising from matters not subject to the parties' will are not suitable for arbitration. Likewise, Article 1/4 of Law No. 4686 on International Arbitration provides that this law shall not apply to disputes concerning real rights on immovable properties located in Turkey and disputes not subject to the parties' will[30]. According to

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27 Akıncı (n 19) 152; Ekşi (n 2) 72; Atalı, Ermenek and Erdoğan (n 4) 741. In a decision rendered by the 6th Civil Chamber of the Court of Cassation, it was ruled that the provision included in the contract between the parties stating that *'Any dispute related to the contract that cannot be resolved by reconciliation or any dispute arising from the contract can be finally resolved through arbitration or judicial means after the temporary acceptance of a panel of three arbitrators appointed as indicated below...' is not compatible with the exclusive acceptance of the arbitration board for the resolution of the dispute, as the decision on the selection of arbitration or judicial means will be made by the employer, and the provision stating* '... the decision on the selection of arbitration or judicial means will be made by the employer,' grants one of the parties the authority to file a lawsuit in court, therefore the arbitration intention is not clear and definitive, thus the arbitration clause is deemed invalid (Court of Cassation 6th Civil Chamber 2022/3703, 2023/1043, 14.03.2023, Lexpera l.a.d.18.01.2023). In a case subject to a decision by the 15th Civil Chamber of Istanbul Regional Court of Justice, the arbitration clause was accepted for disputes arising from a contract for construction in exchange for land share, while in a subsequent separate contract dated later, it was agreed that Istanbul Courts and Enforcement Offices would have jurisdiction over disputes arising from the interpretation and application of this contract in a provision titled 'dispute.' Since both contracts relate to the same immovable property, it was stated in the decision that the contracts should be interpreted together, and as the arbitration intention was not clear and definitive, it was concluded that the arbitration clause is invalid (Istanbul Regional Court of Justice 15th Civil Chamber 1740/1330, 18.10.2018, Lexpera l.a.d.18.01.2023)

28 Pekcanıtez and Yeşilırmak (n 1) 2598

29 Şanlı, Esen and Ataman Figanmeşe (n 9) 674

30 Besides the relevant provisions of the Turkish Civil Procedure Code and the Turkish Code of

these provisions, disputes arising from real rights on immovable properties are not suitable for resolution through arbitration. Arbitration may only be initiated for matters subject to the parties' will, where parties can freely reach agreements, reconcile[31], and if such agreement is deemed valid without the need for a court decision, resorting to arbitration for such disputes is possible[32].

The unsuitability of a dispute for arbitration may lead to the annulment of arbitral awards (Article 439 of Law No. 6100, Article 15 of Law No. 4686) or the refusal of enforcement of foreign arbitral awards under Article 54 of Law No. 5718 on International Private Law and Procedure[33].

Certain disputes, although not expressly prohibited by law, are considered unsuitable for arbitration due to the presence of a superior interest that must be protected, even if they are subject to the parties' will. For instance, cautious consideration is given to resorting to arbitration for the resolution of individual employment disputes in accordance with the principle of protecting the rights of employees[34].

II. INDIVIDUAL EMPLOYMENT DISPUTES RESOLUTION THROUGH ARBITRATION

A. AN OVERVIEW OF EMPLOYMENT DISPUTES

The arbitration route for resolving employment disputes should be evaluated separately based on the nature of the dispute. Different methods have been envisaged for resolving these disputes, which are classified based on the parties involved and the subject matter of the dispute[35].

The distinction between individual and collective employment disputes is based on the parties involved. Disputes arising solely from individual employment relationships between an employee and an employer are termed as individual employment disputes[36]. Examples of such disputes include claims by employees

Obligations, various other laws also contain provisions stating that certain disputes are not suitable for arbitration. Article 262 of Law No. 6098, the Turkish Code of Obligations, stipulates that arbitration agreements cannot be made regarding disputes arising from installment sales contracts. Similarly, Article 1271/1 of Law No. 6102, the Turkish Commercial Code, regulates that arbitration agreements made before the claim for compensation for damage to the passenger or cargo in maritime transport contracts shall not be valid.

31 Kuru (n 4) 5945; Pekcanıtez and Yeşilırmak (n 1) 2631

32 Kuru (n 4) 5946

33 Official Gazette of the Republic of Turkey 12.12.2007/26728

34 Pekcanıtez and Yeşilırmak (n 1) 2632.

35 Melda Sur, *İş Hukuku Toplu İlişkiler* (10th edn Turhan 2022) 409

36 Nuri Çelik, Nurşen Caniklioğlu, Talat Canbolat and Ercüment Özkaraca, *İş Hukuku Dersleri* (35th edn Beta 2022) 1049; Aziz Can Tuncay, Burcu Savaş Kutsal and Yeliz Bozkurt

for wages, severance pay, reinstatement, annual leave, among others. Disputes involving at least one party being a group, such as a labor union, an employer union, or an employer who is not a member of a union, are referred to as collective employment disputes[37]. These disputes can arise during the process of negotiating a collective labor agreement or after its conclusion. Additionally, the involvement of a union in a dispute arising from an individual employment relationship can also classify it as a collective employment dispute. In collective employment disputes, at least one party represents a group[38].

The distinction between rights-interest disputes is based on the subject matter of the employment dispute. Disputes arising from the violation of rights provided by legislation, employment contracts, and collective labor agreements are categorized as rights disputes[39]. On the other hand, disputes arising from the determination of future rules, interests, rights, and obligations of the parties fall under interest disputes[40]. Individual employment disputes always arise as rights disputes, whereas collective employment disputes can be rights disputes or interest disputes[41].

In the resolution of individual employment disputes, optional arbitration is provided for the employee's reinstatement request against the termination of the employment contract under Article 20 of Law No. 4857 on Labor. Regarding the resolution of collective employment disputes, both optional and mandatory arbitration provisions have been made. Article 52 of Law No. 6356 on Trade Unions and Collective Labor Agreements regulates that parties can resort to a private arbitrator by mutual agreement at any stage of collective rights or interest disputes. In this case, optional arbitration applies, and unless otherwise agreed, the provisions of Law No. 6100 on Civil Procedure regarding private arbitrators are applied. While the default resolution method for disputes arising during

Gümrükçüoğlu *Toplu İş Hukuku*, (8th edn Beta 2023) 380; Ömer Ekmekçi, *Toplu İş Hukuku Dersleri* (4th edn On İki Lehva 2022) 513; Fevzi Şahlanan, *Toplu İş Hukuku* (On İki Levha 2020) 511; Sur (n 35) 409; Muhammed Fatih Uşan and Canan Erdoğan, *İş ve Sosyal Güvenlik Hukuku* (4th edn Seçkin 2023) 309

37 Çelik, Caniklioğlu, Canbolat and Özkaraca (n 36) 1049; Tuncay, Savaş Kutsal and Bozkurt Gümrükçüoğlu (n 36) 379; Ekmekçi, Toplu İş Hukuku (n 36) 513; Şahlanan (n 36) 511; Sur (n 35) 409; Uşan and Erdoğan (n 36) 310

38 Ekmekçi, Toplu İş Hukuku (n 36) 513

39 Çelik, Caniklioğlu, Canbolat and Özkaraca (n 36) 1048; Tuncay, Savaş Kutsal and Bozkurt Gümrükçüoğlu (n 36) 379; Ekmekçi, Toplu İş Hukuku (n 36) 514; Cevdet İlhan Günay, *İş ve Sosyal Güvenlik Hukuku Dersleri* (6th edn Yetkin 2020) 463; Sur (n 35) 410; Şahlanan (n 36) 510; Uşan and Erdoğan (n 36) 310

40 Çelik, Caniklioğlu, Canbolat and Özkaraca (n 36) 1048; Tuncay, Savaş Kutsal and Bozkurt Gümrükçüoğlu (n 36) 380; Ekmekçi, Toplu İş Hukuku (n 36) 514; Şahlanan (n 36) 510; Sur (n 35) 410; Uşan and Erdoğan (n 36) 310

41 Ekmekçi, Toplu İş Hukuku (n 36) 513; Günay, İş ve Sosyal Güvenlik (n 39) 463

the negotiation of a collective labor agreement is adversarial methods, there are instances where mandatory arbitration is stipulated. Mandatory arbitration stages are regulated in cases where the result of a strike vote is against striking, in cases where strikes and lockouts are prohibited, and in cases where strikes or lockouts are postponed by the President, with the High Arbitration Board being empowered. Failure to resort to mandatory arbitration in these cases leads to the loss of the authority of the labor union. The processes of optional and mandatory arbitration result in the emergence of a collective labor agreement (Article 52/3, Article 51/2 of Law No. 6356).

B. LEGAL REGULATION REGARDING ARBITRATION

With the enforcement of Law No. 4857 on Labor in 2003, a provision allowing recourse to private arbitration, namely arbitration, was introduced into our legal system, but only in the context of reinstatement lawsuits within the framework of job security provisions concerning individual employment disputes. According to Article 8 of the Convention concerning Termination of Employment at the Initiative of the Employer (No. 158), prepared by the International Labour Organization, and ratified by Turkey, titled "*Procedure for Challenging Termination*," "*A worker who believes that his employment has been terminated unfairly has the right to object before a court, labor court, arbitration board, or impartial arbitrator*". Accordingly, it is regulated that a worker whose employment contract is terminated unfairly has the right to object before an impartial authority such as a court, arbitrator, or arbitration board, and has the option to do so. Compliance with this Convention and, as stated in the rationale of Law No. 4857 on Labor, to reduce the workload of labor courts, the possibility of recourse to private arbitration has been provided for in the Law. However, recourse to arbitration is limited to reinstatement lawsuits only.

According to the first paragraph of Article 18 of Law No. 4857 on Labor, an employee with at least six months of seniority in workplaces with thirty or more employees is entitled to job security. When terminating the indefinite-term employment contract of an employee with job security, the employer must have a valid reason based on the employee's qualifications, conduct, or the requirements of the enterprise, workplace, or work. Thus, an employee whose employment contract is terminated in this manner must apply to a mediator within one month from the date of notification of the termination with the claim that no reason was given for the termination, or the reason given is not valid, according to the first paragraph of Article 20 of the Labor Law. If no agreement is reached during the mediation stage, a lawsuit can be filed in a labor court within two weeks from the date the final minutes are drawn up. If the parties agree, the dispute can also be referred to a private arbitrator within the same period instead of a labor court. As seen, arbitration in individual labor law is regulated only within

the framework of reinstatement lawsuits based on job security provisions, and optional arbitration has been arranged.

Before the Constitutional Court's annulment decision[42] dated October 19, 2005, the initial version of the provision was as follows: "*An employee whose employment contract is terminated may file a lawsuit in a labor court within one month from the date of notification of the termination, alleging that no reason was given for the termination, or the reason given is not valid. If there is a provision in the collective labor agreement or if the parties agree, the dispute is brought before a private arbitrator within the same period*.". Thus, according to the initial version of the provision, disputes regarding reinstatement could be resolved through a private arbitrator by including a provision in the collective labor agreement. The phrase "*If there is a provision in the collective labor agreement or if the parties agree*" was annulled by the Constitutional Court. In the reasoning of the annulment decision, it was stated that the provision allowing recourse to a private arbitrator in the collective labor agreement had a normative nature and bound union member employees, that according to Article 36/1 of the Constitution, everyone has the right to bring claims before judicial authorities and to fair trial by making use of legitimate means and methods, and that the provision subject to annulment gave the provisions related to private arbitration in the collective labor agreement the force of law, thus limiting the freedom to bring claims before judicial authorities. It was also emphasized that the inability to assert claims based on the merits before a court was a restriction of the right to seek justice and legal judicial protection, which was not compatible with the principles of a democratic society and proportionality, and therefore, it was found to be contrary to the Constitution.

The ruling stated that, regarding the provision stating, "*if the parties agree, the dispute shall be referred to arbitration within the same period*," the ability of the employee to reach an agreement with the employer regarding the referral of the dispute to arbitration solely rests on the employee's own volition. Therefore, it was argued that the employee, by exercising this volition, would be deemed to have waived the option to initiate legal proceedings, and thus, it was concluded that there is no violation of Article 36 of the Constitution, which guarantees the right to seek legal remedy. Consequently, the request for annulment on this basis was rejected.

At this point, within the framework of job security provided by Article 20, Paragraph 1 of Law No. 4857, it is possible for the parties to resolve disputes regarding reinstatement through arbitration agreements made at their own discretion and to resort to private arbitration.

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[42] Constitutional Court, 2003/66, 2005/72, 19.10.2005 (Official Gazette of the Republic of Turkey 24.11.2007/26710

C. ARBITRABILITY OF INDIVIDUAL EMPLOYMENT DISPUTES

There was no provision in the repealed Labor Law No. 1475 regarding the resolution of individual employment disputes through arbitration. During this period, the Supreme Court of Appeals ruled that arbitration could not be resorted to in the resolution of individual employment disputes, citing reasons such as the public policy nature of labor rights, the purpose of labor law to protect the weak against the strong, and the jurisdiction of labor courts in any dispute related to claims of rights between employees and employers[43]. With the enforcement of Law No. 4857 on Labor in 2003, it was stipulated that in disputes concerning reinstatement as regulated under Article 20 of the Law, parties could resort to a private arbitrator through an arbitration agreement made by their free will. Apart from this provision, there is no explicit prohibition in legal regulations regarding resorting to arbitration in the resolution of individual employment disputes. However, referring to a decision of the General Assembly of Civil Chambers of the Court of Cassation during the period of the old Law, the Court of Cassation also rules that arbitration agreements are not valid for disputes other than reinstatement lawsuits, due to the principle of interpretation in favor of the employee and the provisions concerning the jurisdiction of labor courts being of public policy nature[44]. According to a decision of the 9th Civil Chamber of the Court of Cassation in 2004, disputes arising from employment relationships are explicitly regulated to be resolved in labor courts, and except for disputes regarding the invalidity of termination, reinstatement, and related job security and idle time pay claims, there is no rule stating that other employment disputes can be resolved through a private arbitrator[45]. Therefore, it has been ruled that disputes other than those mentioned must be resolved in labor courts.

In another decision of the 9th Civil Chamber of the Court of Cassation, it was stated that a technical director, whose main duty is to provide directives and lead the team to success, is not considered an athlete and should be classified as

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43 Court of Cassation General Assembly, 9-643/1965/405, 10.11.1965

44 *"...The provisions regulating the jurisdiction of Labor Courts are considered as relating to public order, and it is clearly stated that arbitration agreements are not valid except in reinstatement cases."* Court of Cassation 9th Civil Chamber, 27326/32858, 05.11.2014, Legalbank, l.a.d.20.01.2024. *"The provisions regulating the jurisdiction of Labor Courts are considered as relating to public order, and it is clearly stated that arbitration agreements are not valid except in reinstatement cases; it is optional to make an arbitration agreement in reinstatement cases according to the first paragraph of Article 20 of Law No. 4857, and it is established practice that in case of agreement between the parties, the dispute can be resolved through arbitration; it is also established practice that the jurisdiction and authority of Labor Courts cannot be abolished by arbitration agreements."* Istanbul Regional Court of Justice 31st Civil Chamber, 2018/2402, 2019/897, 30.04.2019, Lexpera l.a.d.20.01.2024

45 Court of Cassation 9th Civil Chamber, 5846/5621, 22.03.2004, legalbank l.a.d.20.01.2024

an employee within the scope of the Labor Law[46]. Therefore, disputes arising from the employment contract between the employer club and the technical director should be adjudicated in labor courts, as the Labor Law does not foresee arbitration for labor claims other than those related to job security provisions. It was ruled that the existence of arbitration boards or tribunals established by federations through regulations or circulars would not eliminate the jurisdiction of labor courts regarding disputes between the technical director and the employer.

According to some authors in legal doctrine, limiting arbitration to only disputes regarding reinstatement is appropriate. According to one view, since the provision of the law under the title "*objection to termination notice and procedure*" is explicitly regulated, it can be understood that the legislator's intention is only related to objections to termination, and therefore, it cannot be applied to other disputes arising from employment contracts[47]. It has been argued that since labor courts are specialized courts established for the protection of employees, and in order to alleviate the workload of these courts, it is not appropriate to delegate the resolution of disputes to arbitrators[48].

According to some authors in legal doctrine, arbitration should be applicable in all areas of individual employment disputes. According to a view expressed before the enactment of Labor Law No. 4857, since parties can freely dispose of disputes through settlement or acceptance, the dispute is subject to the will of both parties. Therefore, arbitration agreements regarding employment disputes should be deemed valid[49]. Similarly, it is considered inappropriate to limit arbitration to reinstatement lawsuits, especially when compared to mediation, which also has a judicial aspect[50]. Indeed, it is not appropriate to limit arbitration to reinstatement claims in terms of labor claims[51]. When an employment dispute arises, it is possible for the parties to voluntarily resort to mediation. In this regard, the possibility of resorting to mediation has not been prevented due to concerns that the employer may exert pressure on the employee, given the

46 Court of Cassation 9th Civil Chamber, 400/7264, 18.03.2010. The same direction, see. Court of Cassation 9th Civil Chamber, 2015/24584, 2018/21216, 22.11.2018; 2008/601, 2009/14931, 01.06.2009; 2009/48047; 2012/10537, 28.03.2012, lexpera l.a.d.20.01.2024

47 Müjgan Yücel 'İş Güvencesi Kapsamında 'Özel Hakem Şartı' (İş Kanunu Madde 20)' (2004) (4) Legal İSGHD 1351; Şahin Emir (n 14) 915; F Barış Mutlay 'Bireysel İş Hukukunda Tahkim' (2006) (Master Degree) Marmara Üniversitesi, Sosyal Bilimler Enstitüsü 33

48 Yücel (n 47) 1364

49 Kuru (n 4) 5951

50 Şahin Emir (n 14) 917; Eda Manav Özdemir and Serhat Eskiyörük, 'İş Hukuku Uyuşmazlıklarının Tahkim Yolu ile Çözümlenmesi' (2020) 17 (67) Legal İSGHD 976; Eda Manav Özdemir, 'Bireysel İş Uyuşmazlıklarında Alternatif Çözüm Yöntemleri ve Tahkime İlişkin Değerlendirmeler' (2023) 50 Sicil İş Hukuku Dergisi 142

51 Şahin Emir (n 14) 917

employee's weak position. Moreover, the mandatory mediation requirement has been introduced as a condition precedent for filing a lawsuit, and it has not been deemed problematic for the employee to waive their rights during this process. Therefore, it would be appropriate to prioritize the parties' free will in resorting to arbitration, without limitation to claims related to reinstatement.

According to one viewpoint, limiting disputes that can be resolved through arbitration to reinstatement lawsuits reduces the likelihood of achieving the goal of reducing the workload in labor courts, which is one of the purposes of introducing arbitration in the law. Although a significant portion of labor disputes are related to job security, the workload in labor courts cannot be reduced solely by allowing arbitration for such disputes[52]. Moreover, while arbitration also has a judicial aspect, permitting arbitration only for objections to termination creates confusion by leading to a situation where some disputes arising from employment contracts are heard in arbitration while others are heard in labor courts[53]. Parties should be able to choose arbitration freely due to the advantages it offers, thereby facilitating the goal of reducing the workload in labor courts[54].

Contrary to the view that arbitration should be limited to reinstatement lawsuits due to the necessity of having specialized judges resolve labor disputes in labor courts, legal doctrine suggests that individuals with expertise in labor law can be selected as arbitrators. In fact, one of the reasons arbitrations is preferred is to have disputes resolved by experts. In labor courts, a significant portion of cases are resolved by resorting to expert opinions, and judgments are based on these expert reports[55]. This not only leads to delays but also entails additional costs. Instead, selecting arbitrators who possess legal and technical expertise related to the dispute can prevent both time and cost inefficiencies[56]. Furthermore, it is argued that the objective of labor courts to achieve swift, easy, and cost-effective resolutions can also be realized through arbitration[57].

Another viewpoint suggests that it is appropriate not to resort to arbitration for disputes arising from employment contracts concluded without equal bargaining power between the employee and the employer, to protect the employee. However, labor disputes should not be categorically deemed unsuitable for arbitration in all circumstances. There should be no hesitation regarding the possibility of

52 Mutlay (n 47) 33

53 Ömer Ekmekçi 'Toplu İş Hukuku Bakımından İş Güvencesi Yasa Tasarısının Değerlendirilmesi' (2001) İş Güvencesi Yasasının Değerlendirilmesi Türk Hukukunun Güncel Sorunları 2001 Temmuz Toplantısı İstanbul Barosu 60

54 Şahin Emir (n 14) 917

55 Aydın (n 13) 855

56 Pekcanıtez and Yeşilırmak (n 1) 2602,2603

57 Mutlay (n 47) 66

resorting to arbitration when a dispute arises from an employment contract that includes an arbitration clause. In such cases, the employee should no longer claim that arbitration is unsuitable[58]. This is because the employee, whose rights are intended to be protected, believes that their rights will be safeguarded through arbitration. For example, in a case where the managing director of a multinational company is party to an employment contract, initiating arbitration proceedings against the employer may be more advantageous for the employee in the position of managing director[59].

Based on the principle of protecting the employee, the viewpoint advocating for arbitration to be limited to disputes related to reinstatement in individual labor disputes argues that the employee, being in a weak position in the employment relationship, will also be disadvantaged in the arbitration process. However, it is not always the case that the employee is in a weak position in the employment relationship. It would not be appropriate to assert that disputes are unsuitable for arbitration based on the presumption that the employee is always in a weak position in every employment contract. Instead, the suitability for arbitration should be determined by considering the specific characteristics of the existing employment relationship and other circumstances of the case[60]. For instance, it would be difficult to argue that highly paid skilled workers or senior executives in a workplace are in a weak or vulnerable position in the employment relationship. It is likely that these employees would prefer to resolve any disputes that may arise quickly and confidentially through arbitration. Therefore, it should be acknowledged that arbitration can be chosen for the resolution of any employment dispute without being subjected to pressure from the employer, in line with their free will.

It should be noted here that regardless of the circumstances, it is important to apply Turkish labor law as much as possible in labor disputes. Therefore, it would not be correct to say that arbitration is suitable for all labor disputes. Additionally, when it comes to annulment proceedings in arbitration, the judge cannot delve into the substance of the matter but can only conduct a formal review. This could pose a problem in terms of labor disputes once again.

When evaluating whether an employee can still resort to labor courts despite agreeing to arbitration, it is crucial to determine whether arbitration serves as an alternative to the state judiciary or bypasses it. The Court of Cassation has ruled that arbitration agreements entered voluntarily by the parties will be valid only for reinstatement lawsuits, but such agreements cannot eliminate

58 Akıncı (n 19) 105; Özel (n 24) 49

59 Akıncı (n 19) 105

60 Şahin Emir (n 14) 925; Bengi Sargın 'Bireysel İş Uyuşmazlıklarında Tahkime Elverişlilik' (2021) 16 (177) Terazi Hukuk Dergisi 927

the jurisdiction and authority of labor courts[61]. According to one viewpoint, an arbitration agreement does not nullify the jurisdiction of the court. If the parties decide to resort to arbitration, the employee retains the option to choose whether to go to court or arbitration[62]. Conversely, another viewpoint suggests that an arbitration agreement eliminates the jurisdiction of the court. In this scenario, once an arbitration agreement is made, the option to approach the labor court is closed, and the dispute can only be taken to arbitration[63]. It is essential for the intention to resort to arbitration to be clearly and unequivocally expressed in the arbitration agreement. Any doubt regarding the parties' intention to resort to arbitration should be eliminated. Accepting that the parties retain the right to go to court despite entering into an arbitration agreement indicates that the intention for arbitration is not definitive.

D. ARBITRATION AGREEMENT IN INDIVIDUAL LABOR LAW

1. Subject Matter of the Arbitration Agreement

Since the arbitration agreement or clause is a contract in the context of contract law, like any contract, it must comply with law and morality. The Court of Cassation has ruled that arbitration agreements made in a manner contrary to morality concerning labor disputes will be void. In one of its decisions, the 22nd Civil Chamber of the Court of Cassation ruled that if one party, using its economic and social superiority over the other party, imposes conditions in the arbitration agreement that would disrupt equality in its favor, the contract would be deemed contrary to morality, and an arbitration agreement contrary to morality would be invalid[64]. Giving one party the opportunity to select more than half or all the arbitrators was cited as an example of this situation. It was stated that since the employee, who is economically weak compared to the employer, is dependent on the employer in the establishment and continuation of the employment contract, there cannot be freedom of will under the employer's control, and if the employer, in this case, uses its superiority over the employee to impose conditions that disrupt equality in its favor, the arbitration agreement would be void.

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61 Court of Cassation 9th Civil Chamber, 2016/21367, 2017/14609, 02.10.2017, Legalbank, l.a.d.20.01.2023

62 Devrim Ulucan, *İş Güvencesi* (2nd edn Türkiye Toprak Seramik Çimento ve Cam Sanayii İşverenleri Sendikası 2003) 77

63 Ercan Akyiğit 'İş Güvencesi Uyuşmazlığının Özel Hakeme Götürülmesi' (2004) Ağustos-Kasım TÜHİS 119

64 Court of Cassation 22nd Civil Chamber, 27461/21048, 26.09.2016; For the same view, see Bursa Regional Court of Justice 3rd Civil Chamber, 2018/3462, 2019/355, 08.02.2019; Court of Cassation 9th Civil Chamber, 2007/35895, 2008/11994; 2007/28539, 2007/26478, Legalbank, l.a.d.20.01.2024

2. Time of Making the Arbitration Agreement

In essence, the arbitration agreement can be made before or after the dispute arises. However, regarding individual labor disputes, there is no separate regulation in the Labor Law regarding when the arbitration agreement should be made. According to the established practice of the Court of Cassation, arbitration agreements made during the establishment and continuation of the employment contract are invalid. In a decision of the 9th Civil Chamber of the Court of Cassation in 2010, it was stated that from the wording of Article 20 of the Labor Law, it is understood that the private arbitration institution is regulated as a consequence of termination[65]. However, it was also emphasized that the employee is economically weak compared to the employer and is dependent on the employer in the establishment and continuation of the employment contract, and that there is no freedom of will under the authority and control of the employer, and dependency ceases with termination. Therefore, it was stated that recourse to private arbitration through agreement is only possible after the termination of the employment contract in cases of reinstatement claims. In the specific case, it was ruled that since the protocol containing the private arbitration condition signed by the employee while working at the workplace was arranged before the termination of the employment contract, the private arbitration agreement was invalid.

However, previously the Court of Cassation had ruled that the fact that the arbitration agreement was agreed upon during the establishment or continuation of the employment contract alone would not demonstrate the acceptance by free will and that the impairment of will would need to be proven separately[66].

According to the decision of the 9th Civil Chamber of the Court of Cassation in 2013, in the case at hand, it was stated in the document titled "Release and Waiver" issued on the date of termination that the employee had waived all rights and claims against the employer, and in case of wanting to file a lawsuit, they would resort to private arbitration according to Article 20 of the Labor Law, and this agreement was stated to be a arbitration agreement made with the consent of the parties[67]. The Court of Cassation, considering that the document containing the arbitration clause was issued on the same date as the termination

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65 Court of Cassation 9th Civil Chamber, 2009/15514, 2010/3362, 15.02.2010. For the same view, see. 2009/15515, 2010/3363, 15.02.2010; 5916/30463, 10.11.2008; 2010/46608, 2011/1381, 31.01.2011; 5830/29774, 03.11.2008, Lexpera, l.a.d.20.01.2024; Court of Cassation 22nd Civil Chamber, 27461/21048, 26.09.2016, kararama.yargitay.gov, l.a.d.20.01.2024

66 Court of Cassation 9th Civil Chamber, 37878/35335, 26.11.2007, for the evaluation of the decision, see. Nuri Çelik 'İş Sözleşmesinde Kararlaştırılan Özel Hakem Anlaşmasının İradeyi Sakatlayan Bir Durumun Varlığı İspatlanmadıkça Geçerli Sayılması' (2007) 9 Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi 17

67 Court of Cassation 9th Civil Chamber, 1773/6664, 25.02.2013, Legalbank l.a.d.20.01.2024

notice, concluded that the employee was still under the control of the employer, therefore, it could not be accepted that the arbitration clause was later arranged. Additionally, it was noted that the document also included payment of labor rights, thus linking the payment of rights to the signing of the contract containing the arbitration clause, and that the employer, by using its superiority over the employee, imposed conditions in its favor, hence the arbitration agreement did not reflect the employee's clear and definitive arbitration will, and therefore, the arbitration clause was deemed invalid by a majority vote. As understood from the decision, the Court of Cassation accepted that even if the arbitration agreement was made after the termination of the employment contract, for the agreement made on the same day as the termination notice, the employee was still under the influence and authority of the employer. In the dissenting opinion against the decision, it was stated that it was not necessary for the private arbitrator clause to be made on a date after termination to be valid, and that it could be made on the same date as the termination. Additionally, it was emphasized that although provisions regarding release and waiver were included in the contract, the mere assertion of the employee that "*if I had not signed the document, my receivables would not have been paid*" was not sufficient to prove will impairment. Both parties accepted that the private arbitration agreement was made after termination, and it was stated that the decision was not agreed upon due to the lack of evidence of will impairment being proven in accordance with the procedure.

According to the prevailing view in doctrine, parallel to the established practice of the Court of Cassation, it is accepted that the parties can enter into an arbitration agreement after the termination of the employment contract. Therefore, arbitration agreements made during the establishment or continuation of the employment contract should not be considered valid due to the lack of freedom of will of the employee being dependent on the employer during this process[68]. Conversely, according to an opposing view, parties can agree to refer the dispute to private arbitration during the establishment or continuation of the contract[69].

According to one viewpoint, it is not practically feasible for parties to come together and agree to arbitration after the termination of the employment contract. This is because when the employment relationship becomes untenable, the

[68] Çelik (n 66) 26; Sarper Süzek, *İş Hukuku* (23rd edn Beta 2023) 638; Öner Eyrenci '4857 Sayılı İş Kanunu ile Getirilen Yeni Düzenlemeler Genel Bir Değerlendirme' (2004) 1 Legal İSGHD, 36; Pekcanıtez and Yeşilırmak (n 1) 2640; Eda Manav Özdemir 'İş Mahkemelerinin İşleyişi ve Bireysel İş Uyuşmazlıklarının Alternatif Çözüm Yöntemleri' (2015) 4 Çalışma ve Toplum 990; Mutlay (n 47) 79

[69] Münir Ekonomi 'Hizmet Akdinin Feshi ve İş Güvencesi' (2003) Mart Özel Eki Çimento İşveren Dergisi 25; Cevdet İlhan Günay 'İş Güvencesi Uygulamasında Hukuki Sorunlar ve Öneriler' (2010) Osman Güven Çankaya'ya Armağan Kamu-İş 176.

parties may not wish to interact with each other[70].

Another perspective suggests that the validity of the arbitration clause inserted during the establishment of the employment relationship should be assessed based on whether it nullifies the jurisdiction of the court. If it is accepted that the arbitration clause does not nullify the jurisdiction of the court, the employee's recourse to the court remains available, regardless of whether the arbitration clause was agreed upon during hiring, during the continuation of the employment relationship, or after termination. However, if it is accepted that the arbitration clause nullifies the jurisdiction of the court, it is stated that the arbitration clause inserted into the contract at the time of hiring would be invalid[71]. According to this view, the arbitration clause inserted during the continuation of the employment relationship should be considered valid if the employee's will be not impaired[72].

According to another perspective, since the Labor Law does not set any time limit for the conclusion of an arbitration agreement, the timing of the contract's signing should not be considered relevant to the validity of the arbitration agreement as long as the employee's will is not impaired[73]. The specific characteristics of the case should be considered. In this regard, factors such as whether the employee was sufficiently informed about the matter, the education level of the employee, and the nature of the work the employee is required to perform should be considered. By doing so, it can be determined whether the employee wishes to resort to arbitration freely, without being under pressure[74].

Indeed, the employee party to an employment contract may not always be in a weak, disadvantaged position. Qualified employees in the workplace, including top-level executives, cannot be considered as the weaker party in the contract. These employees may possess extensive knowledge about the operation of the workplace, business secrets, and may not be inherently weak, ignorant, or inexperienced to understand the nature of an arbitration agreement. Therefore, parties may prefer to resolve disputes through arbitration, quickly and confidentially. Hence, rather than deeming the contract invalid due to the arbitration agreement being concluded before the termination of the employment contract, it would be more appropriate to evaluate the parties' qualifications and negotiating power. While it can be accepted that employees in a weak position may not be able to freely enter into an arbitration agreement during the establishment and continuation of the employment contract, the same may not apply to employees who are not in a weak position. Therefore, for these

70 Tankut Centel, *İş Güvencesi*, (2nd edn Legal 2020) 203,204; Aydın (n 13) 860

71 Akyiğit (n 63) 119; Aydın (n 13) 850

72 Akyiğit (n 63) 119

73 Şahin Emir (n 14) 937

74 ibid 939

employees, it should be acknowledged that an arbitration agreement can be concluded during the establishment and continuation of the employment contract.

3. The Form and Procedure of Arbitration Agreement

Regarding the form of the arbitration agreement for individual employment disputes, there is no specific regulation in the Labor Law. Therefore, it would be appropriate to apply the provisions of the Code of Civil Procedure No. 6100 concerning the formality of arbitration agreements also to arbitration agreements related to labor disputes. Accordingly, according to the third paragraph of Article 412 of the Law, the arbitration agreement must be made in writing[75]. The arbitration agreement for the resolution of individual employment disputes can be arranged either as a provision in a contract between the parties or as a separate agreement. It may also be evaluated whether the arbitration agreement can be included as a condition in workplace regulations or in standard employment contracts as a general transaction condition.

Workplace regulations (internal workplace regulations) are regulations unilaterally prepared by the employer to be applied throughout the workplace or in a specific section to establish a uniform working regime and to regulate some working conditions in a general and abstract manner[76]. Workplace regulations become annexed to the employment contract with the employee's acceptance. Workplace regulations are generally considered as general transaction conditions, and their binding effect on the employee is evaluated within this framework.

A general transaction condition refers to the contract provisions unilaterally prepared by one of the parties for use in numerous similar contracts in the future and presented to the other party during contract negotiations[77]. In terms of labor law, general transaction conditions may manifest as standard employment contracts - standard contract forms. Standard employment contracts (agreements) contain predetermined working conditions, and there is no negotiation or discussion between the employee and the employer regarding these conditions[78]. These regulations, considered as general transaction conditions, are subject to evaluation within the framework of Articles 20-25 of the Turkish Code of Obligations No. 6098. Accordingly, provided that the employer clearly informs the employee of the existence of these conditions and enables the employee to learn their

[75] Akyiğit (n 63) 120

[76] Çelik, Caniklioğlu, Canbolat and Özkaraca (n 36) 254,255; Süzek (n 68) 65; Hamdi Mollamahmutoğlu, Muhittin Astarlı and Ulaş Baysal, *İş Hukuku Ders Kitabı Cilt:1 Bireysel İş Hukuku* (6th edn Lykeion 2022) 15; Aydın Başbuğ and Mehtap Yücel Bodur, *İş Hukuku* (5th edn Beta 2018) 25; Emine Tuncay Senyen Kaplan, *Bireysel İş Hukuku* (10th edn Gazi 2019) 17; Uşan and Erdoğan (n 36) 48

[77] Fikret Eren, *Borçlar Hukuku Genel Hükümler* (20th edn Yetkin 2016) 215

[78] Süzek (n 68) 64

content and the employee accepts them, general transaction conditions contrary to the interests of the employee become part of the contract (Turkish Code of Obligations No. 6098, Art. 21).

In a decision rendered by the 9th Civil Chamber of the Court of Cassation in 2008, it was ruled that if the arbitration clause is obtained from each employee through a standard contract, the clause does not reflect the employee's free will and therefore is not valid[79]. Indeed, if the arbitration clause is included in workplace regulations or standard employment contracts as a non-negotiable general transaction condition, it appears difficult to argue that the employee's free will is present and that a valid arbitration agreement exists. According to the viewpoint acknowledging that employees who are economically weak and dependent on the employer when establishing or continuing an employment relationship cannot freely enter into arbitration agreements before the termination of the employment contract, the arbitration clause envisaged in workplace regulations or standard employment contracts is also considered invalid for the same reason[80].

It is emphasized that workplace regulations, which constitute general and uniform rules to be applied in the workplace, and standard employment contracts prepared for application to multiple employees are unilaterally prepared by the employer, leaving no opportunity for negotiation by the employee. Therefore, it is stated that the validity of the arbitration clause included in these regulations poses serious problems in reflecting the true will of the employee[81]. Nevertheless, it is highlighted that, without a prior assessment of the validity of the arbitration clause, an evaluation of the specific characteristics of the case is required to determine whether the employee was adequately informed about the arbitration clause, whether the employee accepted it, and whether they were in a weak position in the contract[82].

E. EMPLOYEE INVENTIONS

The regulations concerning employee inventions are stipulated in Articles 113-122 of Law No. 6769 on Industrial Property[83], and within this framework, mandatory arbitration for employee inventions is provided for in Article 24 of the Regulation on Employee Inventions, Inventions Realized at Higher Education Institutions, and Inventions Arising from Publicly Funded Projects. According to the Regulation, an employee refers to individuals who are in a personal dependency

79 Court of Cassation 9th Civil Chamber, 38211/28868, 27.10.2008

80 Süzek (n 68) 638; Eyrenci (n 68) 36

81 Şahin Emir (n 14) 925; Mutlay (n 47) 76

82 Şahin Emir (n 14) 925; Sargın (n 60) 927

83 Official Gazette of the Republic of Turkey 10.01.2017/29944

relationship with an employer, being obliged to fulfill specific tasks assigned by the employer within the scope of a private law contract or a similar legal relationship, as well as public officials (Article 4/1, b). An employee invention, on the other hand, encompasses service inventions or free inventions that can be protected by patent or utility model, realized by the employee (Article 4/1, c).

In the event of an employee realizing an invention, the obligation to notify the employer of this is envisaged, and it is regulated that in this case, the employer may claim full or partial rights over the invention (Article 115/1 of Law No. 6769). Faced with such a claim, the employee has the right to demand a reasonable compensation in return (Article 115/6 of Law No. 6769). Factors such as the economic assessability of the invention, the employee's role in the business, and the contribution of the business to the realization of the invention will be considered in calculating the compensation to be paid (Article 115/7 of Law No. 6769). It is stipulated that in the event of the parties failing to agree on the amount of compensation, the dispute shall be resolved through arbitration (Article 24/1 of the Regulation). In this case, mandatory arbitration for the resolution of the dispute is provided without the requirement of a written arbitration agreement. The applicable provisions are those relating to arbitration in Law No. 6100 on Civil Procedure, and in case the dispute involves a foreign element, Law No. 4686 on International Arbitration shall apply (Article 24/2 of the Regulation). The parties are also provided with the opportunity to resolve the dispute through mediation before resorting to arbitration (Article 24/5 of the Regulation).

III. RECOMMENDATIONS FOR THE APPLICATION OF ARBITRATION IN INDIVIDUAL EMPLOYMENT DISPUTES

A. A SIMILAR APPROACH TO CONSUMER ARBITRATION BOARDS

The establishment of a structured arbitration system for the resolution of individual employment disputes through arbitration is considered. In this regard, the Ministry of Justice has contemplated the development of an approach like consumer arbitration boards. Pursuant to Article 66 of Law No. 6502 on the Protection of Consumers[84], consumer arbitration boards have been established to resolve disputes arising from consumer transactions or practices directed towards consumers. It is mandatory to apply to consumer arbitration boards for consumer disputes up to a certain amount. Subject to the parties' rights under the Enforcement and Bankruptcy Law, application to the consumer arbitration board is mandatory for disputes valued at less than thirty thousand Turkish Liras. No application to consumer arbitration boards can be made for disputes exceeding this amount (Article 68/1 of Law No. 6502). The dispute amount threshold changes annually.

[84] Official Gazette of the Republic of Turkey 28.11.2013/28835

The application can be made to the consumer arbitration board located in the consumer's place of residence or where the consumer transaction took place. In places where there is no consumer arbitration board, application can be made to the district governorship. These applications are forwarded to the authorized consumer arbitration board determined by the Ministry for the necessary action to be taken by the governorships (Article 68/3 of the Consumer Protection Law).

Decisions of consumer arbitration boards are binding on the parties (Article 70 of Law No. 6502). Parties may appeal to the consumer court within fifteen days from the date of notification of the consumer arbitration board's decision. The appeal does not suspend the enforcement of the consumer arbitration board decision. However, upon request, the judge may suspend the enforcement of the consumer arbitration board decision as a precautionary measure (Article 70/3 of Law No. 6502).

If it is deemed necessary to accept the objection due to the decision being substantively lawful and there being an error in the application of the law to the case, or if it does not require retrial due to non-compliance with the law, the consumer court may affirm the decision by changing or correcting it based on the documents. This provision also applies to errors concerning the identities, trade names, writing, calculations, or other explicit expressions. If the decision is found to be procedurally and legally compliant but the rationale is deemed incorrect, the rationale may be changed or corrected, and the decision shall be affirmed accordingly (Article 70/4 of the Consumer Protection Law). The decision of the consumer court upon appeal against consumer arbitration board decisions is final (Article 70/5 of the Consumer Protection Law).

Although the establishment of a system similar to consumer arbitration boards may be considered as a recourse for individual employment disputes, it is noted that such a method may not expedite dispute resolution or alleviate the workload of the courts, given the high number of applications to consumer arbitration boards in our legal system and the fact that a significant portion of these applications are subsequently referred to courts as litigation[85].

In 2012, efforts were made by the Ministry of Justice to establish a mechanism like consumer arbitration boards in order to resolve labor disputes without resorting to court litigation. Within this scope, a working group consisting of academics, representatives from the Court of Cassation, judges, and representatives from relevant institutions and civil society organizations was formed. The working group proposed the establishment of three-member arbitration boards chaired by the provincial directorate of labor in each province and in some districts, comprising a representative from the labor union and a representative from the employer union. These arbitration boards were intended to resolve labor disputes

[85] Manav Özdemir, Alternatif Çözüm (n 68) 209

amounting to less than five thousand Turkish Liras. It was also proposed that there be a right to appeal the decisions of these boards to labor courts, with the court's decision being final. The aim was to ensure alignment with the existing Labor Courts Law, Code of Civil Procedure, and the establishment of the arbitration board. A draft law proposal was prepared at the end of the study, but it was not implemented[86].

Considering some hesitations existing in insurance arbitration, it may be more appropriate to establish a structure like the consumer arbitration board. As we will express below, the system in insurance arbitration is financed by insurance companies, but which employer can finance it in labor disputes? Moreover, the number of insurance companies is more manageable, but in Turkey, there are thousands of employers, and not all of them have the same scale of workplace.

B. ESTABLISHMENT OF A BODY SIMILAR TO CONSUMER ARBITRATION BOARDS

For individual employment disputes, consideration could be given to enacting a regulation like the insurance arbitration commission system. Article 30 of Law No. 5684 on Insurance[87] regulates arbitration in insurance matters, establishing the Insurance Arbitration Commission under the Turkey Insurance, Reinsurance and Pension Companies Association. According to the relevant provision, disputes arising between the insured or beneficiaries of the insurance contract and the party assuming the risk or beneficiaries of the account shall be resolved by an arbitrator/arbitration panel appointed by the Insurance Arbitration Commission. The dispute must arise from the insurance contract for it to be subject to arbitration[88]. In cases where the Insurance Law does not provide provisions, the provisions of the Civil Procedure Law shall be applied by analogy (Article 30/23 of Law No. 5684).

Insurance companies wishing to participate in the arbitration system must notify the Insurance Arbitration Commission in writing. Even if there is no specific arbitration clause in the contract in question, the party in dispute with an insurance company that is a member of the arbitration system may resort to arbitration. In other words, a separate arbitration agreement is not required between the insurer and the insured or beneficiaries of the insurance contract for arbitration to be initiated. The insurer's membership in the insurance arbitration system is sufficient for the opposing party to initiate arbitration[89]. However, in

86 ibid 209

87 Official Gazette of the Republic of Turkey 14.06.2007/26552

88 Ekşi (n 2) 43

89 ibid 44

disputes arising from compulsory insurance, even if the relevant organization is not a member of the insurance arbitration system, claimants may still benefit from arbitration proceedings (Article 30/1 of Law No. 5684).

The insured or beneficiaries of the insurance contract are not obliged to resort to insurance arbitration; they may choose to file a lawsuit in court if they wish. Conversely, individuals in dispute with an insurance company may opt to initiate arbitration proceedings if they so desire, thus exercising their discretionary right. However, once the insured or beneficiaries of the insurance contract have initiated arbitration for dispute resolution, the insurance company cannot raise objections to insurance arbitration[90]. Therefore, this type of arbitration cannot be classified as mandatory arbitration, nor can it be considered optional arbitration[91].

Regarding disputes brought before the Insurance Arbitration Commission, objections can be lodged with the Commission within ten days against arbitrator decisions pertaining to disputes amounting to fifteen thousand Turkish Liras or more. Decisions issued for disputes below fifteen thousand Turkish Liras are final. Appeals can be made to the appellate court against decisions made upon objection for disputes exceeding two hundred thirty-eight thousand seven hundred thirty Turkish Liras. As the appellate process is available for arbitration decisions, the provisions of Law No. 6100 on the annulment of arbitrator decisions will not be applicable to insurance arbitration[92].

Given the discretionary nature of the Insurance Arbitration Commission system for the insured or beneficiaries, it could be considered as a viable mechanism for resolving employment disputes. However, if a similar system were to be established for employment disputes, several considerations would need to be addressed. These include potential limitations based on the subject matter and monetary value of employment disputes, the application of membership requirements for employers by insurance companies, whether membership requirements would apply to all employers or if restrictions would be imposed, and whether compliance with the mandatory mediation requirement for individual employment disputes should still be ensured before resorting to the arbitration commission. Additionally, determining the party responsible for covering the expenses incurred as a result of arbitration proceedings is also a crucial aspect to consider.

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90 Mehmet Özdamar 'Sigorta Hukukunda Uyuşmazlıkların Çözümünde Tahkim Sistemi' (2013) 17 (1-2) Gazi Üniversitesi Hukuk Fakültesi Dergisi 838

91 Ekşi (n 2) 44

92 ibid 47

CONCLUSION

Employment disputes concern workers who, economically disadvantaged and reliant on their employers to sustain their livelihoods, contribute their labor. Therefore, it is crucial to resolve these disputes quickly, easily, and economically without causing detriment to the parties involved. The primary venue for resolving employment disputes is the labor courts, where specialized judges in labor law preside. However, the increasing number of disputes continues to burden the already overwhelmed labor courts. Hence, alternative dispute resolution methods that offer faster and easier resolution than courts are important. In compliance with international agreements and to alleviate the workload of labor courts, arbitration was introduced for individual employment disputes through Law No. 4857, albeit with limited applicability mainly concerning claims of invalid termination. However, the intended effect of reducing the workload of arbitration courts has not been achieved due to limited scope and narrowing through judicial decisions.

Individual employment disputes are conflicts that parties can freely dispose of and settle through conciliation or acceptance. Although parties can agree to resolve disputes through voluntary mediation, they are also subject to mandatory mediation. Consequently, during the mediation stage, workers may freely negotiate with employers and may choose to waive certain rights. However, due to the economic vulnerability of workers and their dependency on employers in employment relationships, the resolution of disputes through arbitration is approached with caution in line with the principle of protecting workers. While there is no provision expressly prohibiting the resolution of employment disputes through arbitration, it is primarily accepted in case law and doctrine that arbitration is only available for reinstatement claims, as stipulated in Article 20 of the Labor Law. While it may be argued that the legislator's intention was solely to allow arbitration for reinstatement claims, such a restriction for disputes where parties can freely dispose of their rights and settle through mediation is not appropriate. Priority should be given to the freely exercised will of the worker to resort to arbitration, who has the opportunity to freely negotiate during the mediation stage. Therefore, parties should be given the option to resort to arbitration for other individual employment disputes beyond those related to job security.

The prevalent view in both judicial decisions and legal doctrine is that parties can only enter into a valid arbitration agreement after the termination of the employment contract. In essence, an arbitration agreement can be made before or after the emergence of a dispute. However, there is no separate regulation regarding this matter concerning employment disputes. Moreover, it cannot be inferred from the wording of the provision concerning reinstatement that there is a requirement for the arbitration agreement to be made after the termination of the employment contract. Nevertheless, it can be argued that the worker

may not have full freedom of will to enter into an arbitration agreement at the time of entering into the employment contract due to concerns about securing employment, and during the continuation of the contract, due to concerns about income and dependency on the employer. Therefore, it is favorable for the arbitration agreement to be made after the termination of the employment contract to ensure the worker's free will. However, it is difficult for parties to come together and agree to resort to arbitration after the termination of the employment contract and the emergence of a dispute. While it may be concluded that the worker may exercise their free will to enter into an arbitration agreement after the termination of the employment contract, this may not be applicable to all employment relationships. For example, it is difficult to argue that highly paid qualified employees or senior executives are in a weak position in their employment relationships. It should be acknowledged that employees in such positions may prefer to resort to arbitration freely during the establishment, continuation, and termination of the employment contract for the purpose of expeditiously and confidentially resolving disputes. Therefore, depending on the specifics of the case, validity should be given to the arbitration agreement made during the establishment or continuation of the employment contract without considering the arbitration agreement as initially void.

Contrary to popular belief, the arbitration route, which is generally considered to be limited in terms of worker protection, can actually create an advantageous situation for the worker. Disputes can be resolved much more quickly through arbitration than through court litigation, and the cost of arbitration is not as high as commonly thought. Especially during periods of high inflation, arbitration is a favorable institution for workers to promptly recover their receivables. The widespread adoption of arbitration, changing society's perception of courts and dispute resolution, fostering a culture of settlement, and encouraging the voluntary adoption of these methods can facilitate this process. Until society embraces this mindset, a corporate arbitration structure for resolving individual employment disputes can be established while considering concerns for worker protection and without disregarding party intentions. Through regulations, organization establishment, and oversight mechanisms, disputes can be resolved outside of court litigation.

BIBLIOGRAPHY

Akıncı Z, *Milletlerarası Tahkim* (5th edn Vedat 2020)

Akyiğit E, 'İş Güvencesi Uyuşmazlığının Özel Hakeme Götürülmesi' (2004) Ağustos-Kasım TÜHİS 106

Arslan R, Yılmaz E, Taşpınar Ayvaz S and Hanağası E, *Medenî Usul Hukuku* (9th edn Yetkin 2023)

Atalı M, Ermenek İ and Erdoğan E, *Medenî Usûl Hukuku* (6th edn Yetkin 2023)

Aydın B, 'Bireysel İş Uyuşmazlıkları ve Tahkim' (2015) Mehmet Akif Aydın'a Armağan 839

Başbuğ A and Yücel Bodur M, *İş Hukuku* (5th edn Beta 2018)

Centel T, *İş Güvencesi* (2nd edn Legal 2020)

Çelik N, 'İş Sözleşmesinde Kararlaştırılan Özel Hakem Anlaşmasının İradeyi Sakatlayan Bir Durumun Varlığı İspatlanmadıkça Geçerli Sayılması' (2007) 9 Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi, 17

Çelik N, Caniklioğlu, N, Canbolat, T and Özkaraca, E, *İş Hukuku Dersleri* (35th edn Beta 2022)

Doğan V, *Milletlerarası Özel Hukuk* (7th edn Savaş 2021)

Ekmekçi Ö, 'Toplu İş Hukuku Bakımından İş Güvencesi Yasa Tasarısının Değerlendirilmesi' (2001) İş Güvencesi Yasasının Değerlendirilmesi Türk Hukukunun Güncel Sorunları 2001 Temmuz Toplantısı İstanbul Barosu 53 (İş Güvencesi)

Ekmekçi Ö, *Toplu İş Hukuku Dersleri* (4th edn On İki Lehva 2022) (Toplu İş Hukuku)

Ekonomi M, 'Hizmet Akdinin Feshi ve İş Güvencesi' (2003) Mart Özel Eki Çimento İşveren 1

Ekşi N, *Hukuk Muhakemeleri Kanunu'nda Tahkim* (2nd edn Beta 2019)

Erdoğan E, *Hakem Kararlarının Kesin Hüküm Etkisi* (Yetkin 2017)

Eren F, *Borçlar Hukuku Genel Hükümler* (20th edn Yetkin 2016)

Eyrenci Ö, '4857 Sayılı İş Kanunu ile Getirilen Yeni Düzenlemeler Genel Bir Değerlendirme' (2004) (2) Legal İSGHD 15

Günay Cİ, 'İş Güvencesi Uygulamasında Hukuki Sorunlar ve Öneriler' (2010) Osman Güven Çankaya'ya Armağan Kamu-İş 153 (İş Güvencesi)

Günay, Cİ, *İş ve Sosyal Güvenlik Hukuku Dersleri* (6th edn Yetkin 2020) (İş ve Sosyal Güvenlik)

Kurt R, (2018) "İş Yargısında Arabuluculuk", Türkiye Barolar Birliği Dergisi, S:135, s.405-444.

Kuru B, *Hukuk Muhakemeleri Usulü Cilt 6* (6th edn Demir Demir 2001)

Küçükgüngör E, 'Spor Hukuku Uyuşmazlıklarında Tahkim ve Alternatif Çözüm Yöntemleri' (2004) 22 (4) Banka ve Ticaret Hukuku Dergisi 47

Manav Özdemir E, 'İş Mahkemelerinin İşleyişi ve Bireysel İş Uyuşmazlıklarının

Alternatif Çözüm Yöntemleri‘ (2015) (4) Çalışma ve Toplum 185 (Alternatif Çözüm)

Manav Özdemir E, ‘Bireysel İş Uyuşmazlıklarında Alternatif Çözüm Yöntemleri ve Tahkime İlişkin Değerlendirmeler’ (2023) 50 Sicil İş Hukuku Dergisi 127 (Tahkim)

Manav Özdemir E and Eskiyörük S, ‘İş Hukuku Uyuşmazlıklarının Tahkim Yolu ile Çözümlenmesi‘ (2020) Legal İSGHD 17 (67) 947

Mollamahmutoğlu H, Astarlı M and Baysal U, *İş Hukuku Ders Kitabı Cilt:1 Bireysel İş Hukuku* (6th edn Lykeion 2022)

Mutlay FB, ‘Bireysel İş Hukukunda Tahkim‘ (2006) Master Degree Marmara Üniversitesi Sosyal Bilimler Enstitüsü

Özbay İ and Korucu Y, *Hukuk Muhakemeleri Kanunu Çerçevesinde Tahkim* (Adalet 2016)

Özbek MS, *Alternatif Uyuşmazlık Çözümü* (3rd edn Yetkin 2013)

Özdamar M, ‘Sigorta Hukukunda Uyuşmazlıkların Çözümünde Tahkim Sistemi‘ (2013) 17 (1-2) Gazi Üniversitesi Hukuk Fakültesi Dergisi 831

Özel S, *Milletlerarası Ticari Tahkimde Kanunlar İhtilafı Meseleleri* (Legal 2008)

Pekcanıtez H, Atalay O and Özekes M, *Medenî Usûl Hukuku*, (11th edn On İki Levha 2023)

Pekcanıtez H and Yeşilırmak A, *Medenî Usûl Hukuku Cilt III* (15th edn On İki Levha 2017)

Sargın B, ‘Bireysel İş Uyuşmazlıklarında Tahkime Elverişlilik‘ (2021) 16, (177) Terazi Hukuk Dergisi 915

Senyen Kaplan ET, *Bireysel İş Hukuku* (10th edn Gazi 2019)

Sur M, *İş Hukuku Toplu İlişkiler* (10th edn Turhan 2022)

Süzek S, *İş Hukuku* (23rd edn Beta 2023)

Şahin Emir A, ‘İş Sözleşmesinde Yer Alan Tahkim (Özel Hakem) Şartının Geçerlilik Sorunu’ (2020) 22, (2) Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi 905

Şahlanan F, *Toplu İş Hukuku* (On İki Levha 2020)

Şanlı C, Esen E and Ataman Figanmeşe İ, *Milletlerarası Özel Hukuk* (8th edn Beta 2020)

Şişli Z, ‘Bireysel İş Uyuşmazlıkları ve Yargısal Çözüm‘ (2012) (2) Ankara Barosu Dergisi 43

Şit B, 'Tahkim Anlaşmasının Şekli: Yazılı Şekil Şartı ve İnternet Aracılığı ile Akdedilen Tahkim Anlaşmaları' (2005) 25 (1-2) Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni 411

Tanrıver S, 'Hukuk Uyuşmazlıkları Bağlamında Alternatif Uyuşmazlık Çözüm Yolları ve Özellikle Arabuluculuk' (2006) (64) Türkiye Barolar Birliği Dergisi 151 (Arabuluculuk)

Tanrıver S, *Medenî Usûl Hukuku Cilt II* (Yetkin 2021) (Usul Hukuku)

Tuncay AC, Savaş Kutsal B and Bozkurt Gümrükçüoğlu Y, *Toplu İş Hukuku* (8th edn Beta 2023)

Uşan MF and Erdoğan C, *İş ve Sosyal Güvenlik Hukuku* (4th edn Seçkin 2023)

Yücel M, 'İş Güvencesi Kapsamında 'Özel Hakem Şartı' (İş Kanunu Madde 20)' (2004) (4) Legal İSGHD 1346