

Regulation of Severance Pay: Case of Turkey

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Abstract

The severance pay is a long standing issue of Turkey in the labor relations. It is as a sue generis institution which has important place in the Turkish labor relations between worker and employer since 1937 by Labor Law 3008. Reorganization of severance pay and creation of severance pay fund are discussed in Turkey recently. It has been brought to agenda in 2019. It is aimed to establish a severance pay indemnity system based on individual account in the scope of fund. The rest of paper is organized in three chapters. In the first section an overview of the severance pay in Turkey is given. The main points of the discussion in the public opinion envisaged in the reform package are interpreted on the basis of article 14 of the Labor Law 1475 in the second section. The main results and recommendations are provided in chapter three.

Key words: Turkey, Article 14 of Labor Law 1475, severance pay, labor market, prevailing system.

1. Introduction: The severance pay is a long standing issue of Turkey in labor relations. It is as a sue generis institution which has important place in the Turkish labor relations between worker and employer since 1937 by Labor Law 3008. It was an established system of payment peculiar to this law. The last regulation has been realized by the article 14 of Labor Law 1475 in 1971. According to the article 14 of Labor law 1475 the severance pay is a compensation that should be paid by the employer in case of termination of the employment contract under the certain conditions.

-Termination of employment to fulfill compulsory military service obligations for male employees.

-Retirement in order to receive old age, retirement pension or disability allowance from the relevant insurance institutions.

-Employee's resignation upon completing 3600 premium days and 15 years of insurance period in case of fulfillment of retirement conditions except the age limit and resignation with the submission of the document from the social security institutions indicating the fulfillment of retirement conditions, excluding the age limit to the employer.

-Voluntary termination by female employees within one year following the date of marriage.

-Termination of employment contract in the absence of a valid reason as a set forth with Labor Law by the employer and/or valid reasons.

Period exceeding is considered as one year and total gross wage is taken into account in the calculation of severance payment. With the characteristics, it differs from the indemnity of loss work and notice payment that are being in the other countries. As the result, the severance pay is a sui generis payment in Turkish labor relations.

The amendment related to the severance payment fund is performed in article 14 of Labor Law 1475 in 1975. By this regulation, the severance pay fund was intended to reconstruct the still prevailing system. After new Labor Law 4857 came into force in 2003, except the article 14, all of articles of Labor Law 1475 were abolished. Today, the issues of severance pay and severance pay fund have been taken in the scope of article 14 of Labor Law 1475 by the provisional article 6 of Labor Law 4857.

With this judgment, it is regulated that “*Under the responsibility of the employer, and on condition of being peculiar to only age, disability, death and lump-sum payment case, a fund with related severance pay is formed by employer in an establishment or a bank more than 50% shares of which belongs to the state.*”

The being of the severance pay fund has been discussed between employers and employees in Turkey since 1975. It has been agreed that severance pay fund will be established by taking into account acquired rights of the workers and country's realities (Beşinci Kalkınma Planı, 1985:134). It has been intended to reconstruct the still prevailing system, occupied agenda during last 44 years. It is considered to finance the severance pay with premium system. It was aimed to spread out years the financial loads of severance pay for the employers. Beside this it also prevents to endanger payments of severance pay in case of bankruptcy of employer by this system

The severance pay is seen as an important factor of none-wage cost for the employers in Turkey and the high labor cost is considered among the causes of informal employment in Turkey (Ninth Development Plan, 2007:48). So, it is also most important obligation in the connection with employment for the employers. It is said that it is necessary to revise the obligation of employers regarding employment and make new arrangements in this regard still continuances (Ninth Development Plan, 2007:48).

On the otherhand, it is accepted that the main approach for high and stable growth is developing the private sector-led open and competitive production structure in Turkey (T.C.Kalkınma Bakanlığı, 2014:60). From this point of view, to decrease the non-wage cost of labor has been accepted as a determined factor for increasing the competitiveness power of firms and employability of labor force.

It is considered that severance pay increases the cost of layoff in Turkey (Onuncu Kalkınma Planı, 2014-2018 İstihdam ve Çalışma Hayatı Ö.İ.K. Raporu, 2014:70), (11th.Development Plan, 2019:144). It is aimed to reduce the burden of severance pay on the employer by the last development plan. The regulation of severance pay should be considered within this framework.

It has been adopted as a principle to establish a severance indemnity system based on individual account where accessibility is provided for all workers in dialogue with the social partners (Onuncu Kalkınma Planı 2014-2018:47) (Ulusal İstihdam Stratejisi, 2014:61).

The severance pay has been brought to agenda again by the 11th Development Plan. In spite of this the last development plan doesn't include a detailed draft on severance indemnity system. It is said that legislative studies will be carried out for the severance pay system based on individual account of employees (BBC, 2019:1).It is observed that the right of severance pay has been tried to limited. Two points are discussed as follows.

Firstly, for accounting of severance pay 30 days have been accepted as criteria by the article 14 of Labor Law 1475. While TİSK (Turkish Confederation of Employer Associations) has wanted 15 days to be taken into account in the calculation of severance pay; this proposal has not been accepted by TÜRK-İŞ (Confederation of Turkish Trade Unions), DİSK (Confederation of Progressive Trade Union of Turkey) and KESK (Confederation of Public Employees Trade Union) (Onuncu Kalkınma Planı 2014-2018 İstihdam ve Çalışma Hayatı Ö.İ.K. Raporu, 2014: 70, 80). It is one of the discussion problems between the partners.

Secondly, by the article 3 of Law on Labor Courts which was added an article to Labor Law 4857.By this regulation, the time out was reduced from 10 years to 5 years for severance payment in 2017 (Resmi Gazete, 2017:1). This regulation has terminated the right to claim severance pay and limited the right of employees. While the amount of severance pay will decrease for employees, the cost of lay off workers has been reduced directly for the employers by this regulation.

2. Severance Indemnity System Based on Individual Account: It is aimed to establish a severance indemnity system based on individual account in the scope of severance pay fund. The severance pay is a right based on labor law. So, the main points of the discussion related to the severance indemnity system based on individual account must be interpreted on the basic of article 14 of the Labor Law 1475.

-The new employee will be compulsory included in new system, while current employee may continue with the previous one.

-The acquired rights will be reserved and create individual account for the new employees.

-Monthly premium of severance pay will be made to the individual account in the name of each employee employed by the employer.

-All employees who even left the work by their own wish (resignation) or are dismissed for just case, and whatever their length of service, will be able to receive their severance pay from their individual severance pay account. Ten or fifteen years have been discussed as the waiting period for the payment from the severance pay fund.

-Deductions from the employee and employer will be collected in the individual account integrated with the private pension system. No arrangement has been reached on employer and employee premium rate.

-The new model based on individual account proposed and operation of system is left to market conditions. Budget deficits of system will not be covered by the state. It means that the employees are left alone against to the employer. The low level of unionization is an obstacle to take legal support from the union in this matter.

The evaluation of premiums in the fund is not clear. At the end of waiting period severance pay may be impaired. Domestic savings are insufficient in Turkey. Therefore, usage of the social funds is common as the domestic savings. Usage of saving incentive funds, unemployment insurance fund and housing acquisition fund can be given as examples in Turkey. Severance pay fund can be used as the resource of domestic savings. Beside these, usage of severance pay fund by employers may also be the subject of discussion.

As a consequence, it is important to clarify the principles of operating the fund. Being and operation of the fund must be discussed and realized with compromise between the parties. If these conditions are not realized, it will create new problems in the labor relations in Turkey.

The wage in the calculation of severance pay: Depending on the judgment of related article 14 of Labor Law 1475 regulating the severance pay; it is necessary to calculate severance pay from the “total gross wage” of employee. The main salary paid to the employee within the month, the money given in addition to it and all of the payments born from contract and law which are possible to be measured by money, that are not dependent on a condition and offers continuity, are included in the definition of “total gross wage”.

It is accepted that wage policy must be based on basic wage which will strengthen the wage and productivity relation (Ninth Development Plan, 2007:97). As a result of this, it is considered that the calculation of severance pay must be based on basic gross wage. The basic gross wage will be taken into account in the calculation of social security premium by Social Security Law in Turkey.

In determination of monthly amount of premium of severance pay, basic gross amount of one month’s salary of the employee has been taken as the criterion. It means that the basic gross wage can be accepted as the official wage. Generally, it is observed that the minimum wage has been accepted as the basic gross amount of one month’s salary of employee in Turkey.

It is considered that the calculation of severance pay based on basic gross wage will increase the envelope wage as the partial wage informality in Turkey. It is impossible to accept the wage of qualified employee is paid on minimum wage. As a consequence, the load of severance pay, non-wage cost of labor force and the cost of lay off workers will decrease for the employers by the basic gross wage.

The retirement age: The retirement age has been increased by the proposal in the reform package. The connection of qualified severance pay with the old age insurance is not clear. In the reform package, with the completion 65 years of age, severance pay is entitled. The filling the age of 65 is prerequisite for qualifying the severance pay. As the consequence, there is not a proposal regarding retirement, age limit for entitlement to severance pay in the reform package. It is one of the issues open to discussion between the employers and employees.

Severance pay is removed due to compulsory military obligation: In the end of military obligation, the male workers may not be able to return to their former jobs. This shows that the job security for the male worker who quit his job due to military obligation has been abolished. We can say that it is opposite to the flexible security.

Proposal related to the married woman labor force: In the case that woman dissolves the contract voluntarily within a year beginning from the date of marriage, she is granted severance pay by the article 14 of Labor Law 1475 in 1971. It can be thought as positive discrimination and it is aimed to protect woman labor force in this embodiment.

According to the proposal, if the female worker leaves the work in the first year of her marriage she will be not paid severance pay for leaving the work for marriage reason. The proposal means the deprivation of female workers from the severance pay as a marriage bonus. This regulation has decreased economic power of women. As the result, it has been considered with the place of women in the labor market in Turkey.

The severance pay premiums: The employers will contribute to employees severance account through the ratio contribution. They are opposite to the highly controversial premium rate. Beside this, it is not clear yet whether the government and employees will contribute or not.

In Turkey, social security premiums that are not paid or under-paid is common. It is estimated that this structural characteristic of labor market in Turkey will reflect to the paying of severance pay's premium to the fund. So, this probability is another determining element for the amount of individual severance pay for the employers.

It is estimated that the severance pay premiums of employees in public sector will be paid more regularly than the private sector. As a result, it can be said that workers employed in the public sector will have guaranteed to take severance pay according to the workers in the private sector. Therefore this problem must be solved for the operation of fund.

The term of premium payment: At the end of the certain periods, severance payment is received from the fund. An exception can be brought for 10 or 15 years of waiting period. Addition to this, 50% of the accumulation in the individual account can be withdrawn for purchase of car and houses. The waiting periods are long periods for the employees especially in the private sector.

The ceiling of severance pay: The ceiling of severance pay is not considered by the economic reform package. Amount of severance pay to the employee for his/her service of one year is limited by total retirement bonus of one year of Undersecretary of Prime Minister who is the government officer of the highest rank in Turkey. With the ceiling, it is aimed to balance severance payment between public and private sector in Turkey. Severance pay's upper limit is announced as 6,017.60TRY/year for the first half of the year 2019.

Being insured is a preliminary condition in entitling severance pay: In the scope of article 14 of Labor Law 1475, the right of severance pay is not due to the insured working of the worker. As the result of this, unregistered employed workers have been taken severance pay. If severance pay is based on to the insured working of the worker, non registered workers will not be eligible for severance pay in Turkey. It has been expected to create an effect of preventing informal employment by establishing a structural connection between Social Security Organization and Severance Fund (Kuzgun, 1982).

So, this proposal is contrary to the reality of unregistered employment in the labor market. The unregistered workers shall be deprived of severance pay as a right based on Labor Law 1475. The employees subjected to the Labor Law 4857 and working in permanent work that continue more than 30 days as regards to their characteristics will be included in the scope of fund. Being insured must not to be a preliminary condition in entitling severance pay.

The share of unregistered is 33.5% as of February 2019 (TÜİK, 2019:1). Also for the labor market it is very disappointing that 33.5% of employed people are employed unregistered and they are not in the scope of the social security system. It is aimed to reduce the informal employment rate which is 33.4% to 28.5% in the next five years (11th. Development Plan, 2019:144). Under the current economic conditions, it is not a realistic target.

The severance pay's premiums of the workers employed in public sector will be paid to the fund without interruption and they will be entitled to severance pay from the fund. On the other hand, it is expected that there will be disruptions to the fund in the payment of premiums by the employer for the workers employed in the private sector. The payment of the missing premiums will result in the extension of the period to severance pay and low amount of severance pay in the private sector.

It is accepted that it is difficult to solve the problems of the labor market without solving the unregistered employment (T.R.Development Ministry, 2014:61). It is true for solving the severance pay as a problem in Turkey. To prevent unregistered employment has been accepted as a target in the long period (MoLSS, 2014:15); (G20 Employment Plan 2014-Turkey, 2014:14).

Therefore, establishment of severance pay fund will not solve the problem of severance pay and lead to emergence of new problems unless the unregistered employment is prevented.

Conclusion:

The severance pay is a sui generis institution payment in Turkish labor relations. With this characteristic, the severance pay is seen as an important non-wage cost factor for the employers in Turkey. With the legislation of severance pay it is aimed to reduce non-wage cost of labor for employers. This approach also complies with the economic policy of state.

Although, it is aimed to protect acquired rights, there is a contraction in labor rights. It is seen that some cases have been abolished in order to qualify for severance payment. It is clear that there will be right losses for the employees in the rearrangement of severance pay. So, it will create new problems in the labor relations in Turkey. The probable impacts of severance pay as the new problems have been summarized as follows:

-The basic gross wage is required in the calculation of severance pay. The reason for rearranging severance pay is to reduce non-wage cost of labor force for the firms. This approach is the reflection of the economy policy of Turkey. As a consequence, the load of severance pay, non-wage cost of labor force and the cost of lay off workers will decrease for the employers by the basic gross wage. As the result, severance payment based on the basic wage will result in loss of income for the workers.

-But the real problem is to avoid severance pay for unregistered workers. It is considered that the right of severance pay of unregistered workers is eliminated by being insured as preliminary condition in entitling severance pay. Being insured must not to be a preliminary condition in entitling severance pay. The share of unregistered employment in the labor market is an important obstacle to the being and functioning of the severance pay fund in Turkey.

-In the proposed system employee who lost his job will not receive severance pay immediately. A period of 10 or 15 years can be brought to receive severance pay from the individual account in the scope of fund. These waiting periods are long for the employees especially in the private sector.

-Turkey's economy has fragile structure. The economic instability will cause mass layoffs and collective severance pay's payment will constitute mass financial burden for employers.

-The abolition of return to work for the male employee is considered to be contrary to the concept of secure flexibility. This shows that the job security for the male worker who quit his job due to military obligation has been abolished.

-According to the proposal, the female workers will be not paid severance pay for leaving the work for marriage reason. It means to lose the earned rights for the female workers.

-The connection of qualified severance pay with the old age insurance is not clear. The filling the age of 65 is a prerequisite for qualifying the severance pay.

-The ceiling of severance pay has not been taken by discussions. With the ceiling, it was aimed to balance severance payment between public and private sector in Turkey.

It would be optimistic to expect that the severance pay problem will be resolved with the agreement of the parties. For the time being there is not a prepared draft, and nothing much shared with public opinion and social partners. It is not unclear what kind of system is proposed for regulation of severance pay. It is impossible to be and function as a new system in the near future. As the consequence, it is important to clarify the principles of operating the fund. Being and operation of the fund must be discussed and realized with compromise between the parties. If these conditions are not realized, it will create new problems in the labor relations in Turkey.

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