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FLASH REPORT

Country:	Turkey
Title:	The dismissal of a female employee for requesting her employer to provide childcare
Date:	23 July 2019
Expert:	Kadriye Bakirci
Context	
Issue at stake:	Work-life balance, right to work, gender discrimination
Grounds of discrimination:	Gender
Field of application:	Employment
Source:	National court decision
Applicable law:	Regulation on the Working Conditions for Pregnant or Nursing Workers, and Nursing Rooms and Day Nurseries (<i>Gebe veya Emziren Kadınların Çalıştırılma Şartlarıyla Emzirme Odaları ve Çocuk Bakım Yurtlarına Dair Yönetmelik</i> , Official Journal 16 August 2013), and Employment Act (No.4857) (<i>İş Kanunu</i> , Official Journal 10 June 2003)

Content

Case development: Regulation on the Employment Conditions of Pregnant and Breastfeeding Women and Nursing Rooms and Childcare Centers, Article 15, requires employers to establish nursing rooms and childcare centers. If between 100 and 150 women are employed, a nursing room has to be provided by the employer for children of 0–1 years of age.¹ If more than 150 women are employed, a childcare center has to be opened by the employer for children of 0–6 years of age. However the bank where the applicant was working did not establish any childcare center although it employed a few thousands of female employees. As a result the female employee who was on family related leave sent an official warning to the employer (the bank administration) for the establishment of a childcare center and stated that the absence of a childcare center might constitute a just cause for her to terminate her employment contract under the Employment Act Article 24/II. However the employer did not fulfill the demand of the employee, rejected the female employee's claims and did not allow the female employee to return to the workplace after her family related leave by regarding her warning as a resignation. In the action brought by the applicant, the labour court decided in favour of the employer. The employee then filed an appeal against this decision with the The Court of Cassation 9th Division.

Decision of the court: The Court of Cassation 9th Division held that employers were under the obligation of establishing a nursing room for children of 0–1 years of age if between 100 and 150 women are employed. If more than 150 women are employed, a childcare center has to be opened by the employer for children of 0–6 years of age. The High Court

¹ Regulation on the Working Conditions for Pregnant or Nursing Workers, and Nursing Rooms and Day Nurseries (*Gebe veya Emziren Kadınların Çalıştırılma Şartlarıyla Emzirme Odaları ve Çocuk Bakım Yurtlarına Dair Yönetmelik*), Official Journal 16 August 2013, and Employment Act (No.4857) (*İş Kanunu*) Official Journal 10 June 2003.

decided that the employer did not prove the resignation of the employee. It concluded that by not allowing the female employee to return to the workplace after her family related leave the employee's employment contract was terminated by the employer without any just cause (Employment Act Article 25) and the applicant should receive her severance pay (Employment Act Additional Article 14) and notice pay (Employment Act Article 17).²

Key points of analysis: In order to achieve equality between men and women workers with family responsibilities and between such workers and other workers, Turkey should undertake to develop or promote services, public or private, and in particular child day-care services and other childcare arrangements. In order to provide work-life balance Regulation on the Employment Conditions of Pregnant and Breastfeeding Women and Nursing Rooms and Childcare Centers obliges certain employers to establish nursing rooms and childcare centers. Legally the main responsibility for providing any child care service lies with the public and private employers and that is only for substantially large workplaces which account for a relatively small segment of total employment

Regulation on the Employment Conditions of Pregnant and Breastfeeding Women and Nursing Rooms and Childcare Centers, Article 15, requires employers to establish nursing rooms and childcare centers. However there is evidence that many of these large workplaces do not fulfill the childcare center obligation and there is hardly any legal enforcement. Also, the requirement to establish nursing rooms and childcare centers applies only to establishments where at least 100 women are employed, irrespective of their age or marital status. The fact that it is only the number of women employees that triggers this statutory requirement causes employers to employ fewer women employees than the number stipulated, to escape the obligation. Hence, job opportunities for women are reduced, and discriminatory practice is ingrained. That is why the obligation to open a nursing room and a childcare center should be determined by taking the total number of male and female employees into account. This regulation is a reflection of the attitude that it is the woman who should take care of the child. This is against the principle of equal rights between men and women, and the principle of equal sharing of family responsibilities. According to Article 16 of the Regulation, children of male employees can make use of the nursing rooms and the childcare centers in the father's workplace only if their mothers are dead or the children are under the guardianship of the father. This provision can be criticized, because the child should be able to make use of the facilities available in the father's workplace when there is no nursing room or childcare center in the mother's workplace. This arrangement is a further obstacle to equality in the working life of women.

Internet link source: <http://www.hurriyet.com.tr/ekonomi/yargitaydan-cok-onemli-karar-buna-itiraz-eden-tazminat-alabilecek-41252542>.

² The decision has not been published, but it was reported on 23 June 2019 by TV channels and newspapers such as by Hurriyet daily newspaper.