

June 22 2022

Validity of release in settlements made before mediators

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Release agreements that concern employee receivables from employers are subject to certain formal requirements under article 420 of the Code of Obligation No. 6098 (TCO). In this regard, the following conditions must be met:

- release agreements that concern employee receivables from employers must be executed in writing;
- at the date of release, at least one month must pass from the date of the termination of employment;
- the type and amount of the receivable subject to release must be specified explicitly; and
- payment must be effectuated in full and via a bank.

Release agreements that fail to meet these requirements will be invalid.

There has been controversy around the applicability of article 420 of the TCO under the Turkish Law on Mediation in Civil Disputes No. 6325 (HUAK) with regard to the validity of release agreements in the settlement minutes executed as result of mediation. The HUAK is applicable to the resolution of civil disputes that arise from affairs at the parties' free disposal.

In a decision rendered on 7 February 2022,⁽¹⁾ the Ninth Civil Chamber of the Court of Cassation ruled that article 420 of the TCO was not applicable to releases made before mediators; otherwise, it would be impossible for parties to settle before a mediator. In this regard, as the HUAK sets out that parties cannot initiate legal proceedings about the matters agreed by the parties in case of reaching an agreement as result of mediation, the validity of mediation settlement minutes shall not be evaluated in light of the rules concerning release under article 420 of the TCO.

This decision stresses that, although the same chamber previously assessed the mediation settlement minutes in scope of release provisions, such an approach is no longer used now that the Twenty-Second Civil Chamber of the Court of Cassation has closed and all its works have been transferred to the Ninth Civil Chamber.

Clearly, the Court of Cassation's current approach has facilitated the releases contained in settlement minutes executed before mediators in relation to employee receivables. The decision mentioned in this article, therefore, may encourage mediation in employment disputes.

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Endnotes

(1) 2022/436 E, 2022/1380 K.