

Protection of the Whistleblowing Employee Under Turkish Law

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The concept of “*whistleblower*”, expressed in various ways such as informant, reporter, discloser or notifier in practice and in literature, refers to an individual who reports a conduct contrary to the law, ethics and/or workplace rules encountered in the workplace to the authorized internal bodies or to relevant public authorities, whereas “*whistleblowing*” refers to the act of providing information or reporting by this individual. Reporting any kind of occupational fraud that takes place in the workplace falls within the scope of this definition. In fact, in a decision rendered in May 2023, the Constitutional Court defined the concept of “*whistleblowing*” in the context of labour law as “*the act of reporting and disclosing illegitimate actions or occurrences by an employee to competent authorities either within or outside the workplace*”.

Turkish legislation does not govern whistleblower protection or whistleblowing explicitly. Therefore, the right and obligation to report occupational frauds is explained based on general principles of law, including (i) the right to petition under Article 74 of the Constitution, (ii) the obligation to report criminal activity provided under Turkish Criminal Code, and (iii) the duty of fidelity of an employee provided under Turkish Labour Law. The right to petition, as defined in the Constitution, grants individuals the right to submit applications to competent authorities or to the Turkish Grand National Assembly concerning requests and complaints related to their own or public interest. Provisions within Turkish Criminal Code impose an obligation to report any criminal activity to the competent authorities upon becoming aware and establish penalties for individuals who fail to do so.

Whistleblowing may also be considered as an obligation on the part of the employee within the scope of the employee’s duty of fidelity arising from Turkish Labour Law. This duty is considered as a secondary obligation and primarily obliges employees to safeguard the interests of the employer, and within this context, includes sub-obligations such as keeping confidential information related to the company’s business, to avoid any behaviour that may conflict with the interests of the employer or reporting any occupational fraud witnessed in the workplace to the employer.

However, in practice, the obligation to report occupational frauds often conflicts with employee’s obligation to maintain confidentiality. Even in such cases, the obligation to report, which is crucial for public interest, prevails over employer’s interest in maintaining confidentiality. In this context, for example, if an employee witnesses an occupational fraud within the company, reporting such fraud to its superiors or to external authorities would not be considered a breach of its confidentiality obligation stemming from the employment relationship. In fact, in a decision established in 2016, 7th Civil Chamber of Court of Cassation ruled that “*balancing the interests of the employer with the rights of the employee is necessary. The employee must first report the illegal occurrence to internal authorities. However, one cannot assume that internal notification holds priority in all instances. Depending on the specifics of the case, employee should also be given the right to report external authorities*

and must be protected in such cases.” Hence, when the employee possesses information about criminal actions or when public interest necessitates disclosure, the employee is permitted to divulge its company’s confidential information.

On the other hand, pursuant to the provision envisioned in Article 18 of the Turkish Labor Law by virtue of *International Labor Organisation Convention 158: Termination of Employment Contract*, reporting an occupational fraud witnessed or suspected within the company to the competent internal bodies or administrative authorities shall not constitute a valid reason for termination. Therefore, employment contracts cannot be terminated solely based on the act of whistleblowing. Employer’s obligation to protect and observe the employee arising from the Turkish Labour Law is also crucial in this regard, as it requires the employer to prevent the exclusion, insult or discrimination of employees without any justifiable reason and to ensure that their reputation remains untarnished.

The directive on whistleblower protection adopted by the EU in 2019 (*EU Whistleblowing Directive, Directive (EU) 2019/1937*) (“**Directive**”) encourages employees to report any situation that violates EU laws, allowing for confidential and anonymous reporting when necessary, and aims to ensure that whistleblowers are not penalized by the company. In this context, the Directive suggests that member states impose effective and proportionate sanctions against natural and legal persons who hinder reporting or lead to the suspension, demotion, reduction in rank, alteration of authority or position, reduction in salary or working hours, application of disciplinary or financial penalties, discrimination, intimidation, or any other form of reprisal against whistleblowers.

While the Directive is not legally binding for Türkiye, its impacts are noticeable within the country. Many European-based companies, operating under the laws established in accordance with the Directive in their home countries, have adopted hotlines or reporting mechanisms consistent with the Directive’s standards within their subsidiaries in Türkiye or have revised their existing mechanisms accordingly. Consequently, some of the regulations outlined in the Directive have thus been implemented as a practical example in our country and are being adopted by other companies. Turkish companies are also providing access to hotlines and reporting mechanisms, with number of employees using these mechanisms increasing annually.

Nevertheless, it should be noted that the absence of a legislation specific to whistleblowing and whistleblower protection in Türkiye does not indicate a lack of protection for whistleblowers within Turkish companies. Employers are obligated to provide adequate protection to employees who report and notify, as per their obligations arising from labour law. Incorporating essential explanations regarding this protection within the companies’ codes of conduct, relevant policies and procedures would be useful to inform employees on this issue.

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