

Gökçe

The Resolution

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**NEW
SOLUTION TO
SUBCONTRACTOR
PROBLEM**

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A NEW SOLUTION TO SUBCONTRACTOR PROBLEM

The Decree Law decree no. 696 (Decree Law), which includes subcontracted workers, has been published in the Official Gazette on 24 December 2017. In accordance with the Decree Law, recruitment procedures for such workers have been completed in April 2018. So, has the Decree Law removed the legal concept of subcontracted workers completely? Have subcontracted workers been recruited as permanent workers unconditionally?

There has been a discussion for many years due to the fact that subcontracted workers working in the same workplace by performing the same duties, but under different working conditions from the workers in public institutions. Fundamental social rights of the workers, such as excess of working hours, inadequate occupational health and job security precautions, leave of absence, severance pay and to join the trade union, were the main problems of subcontracting. The Decree Law entered into force by the reason of increasing demands of subcontracted workers who were unable to benefit from the above rights of the employees in public institutions.

With the Decree Law, only subcontracted workers employed under “service providing agreements based on employing” were allowed to be permanent workers. Accordingly, it is not possible to be permanent workers for the subcontractor workers working in the companies that receive public works by turn-key tenders such as roads, water and sewage; workers who are working for a tender that its personnel expenses are under %70; and workers who work for the goods, construction and consultancy tenders. It is regulated that in case the employees of municipal institutions (municipalities, provincial private administrations and its’ subsidiaries) fulfill certain requirements, they will be transferred to the municipal economic entities.



It has been set out certain conditions for subcontracted workers to be permanent workers:

- Retired workers who are currently working and the workers who are entitled to retire and continue to work are excluded from the scope of being permanent worker.
- Applicants must be successful in written and / or oral interviews or practical examination which will be held according to the procedures and principles determined by their administrations.
- To be recruited as permanent workers, subcontracted workers must withdraw the lawsuits and execution proceedings which they have initiated for being employed as permanent workers. In addition, subcontracted workers are also required to sign a “settlement agreement” in order to ensure that they will not make a claim arising from their retrospective rights and receivables due to the fact that they have been recruited as permanent workers.

- With Article 127 of the Decree Law, the conditions seek for the appointment as the civil servants by the Civil Servants Law were also brought for subcontracted workers.
- The condition of security investigation and archive search seek for the appointment as the civil servants is also required for subcontracted workers.

It is important to note that employees are recruited as permanent workers with their current wage. There is no increasing or decreasing in the wage. Therefore, the subcontracted workers who are recruited as permanent workers are not able to benefit from the rights and wages of the current permanent workers. Namely, it is not possible to say that the subcontracted workers were exactly equal with the permanent workers within the scope of Decree Law.

In addition to the foregoing, since the Decree Law has been published during the period of state of emergency (OHAL), applying to the Constitutional Court is not a possible option.

Workers who does not fall within the scope of Decree Law or are not subject to equal rights and wage with permanent workers will not be able to claim their rights before the Constitutional Court.

With the abovementioned regulation and after the completion of the recruitment process, we will see that whether the problems of the subcontracted workers are resolved.



Answers. Not theories.

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