

Decision of the Court of Cassation on the Competent Court in Cases Arising from the Tortious Liability of the Employee

1. Overview of the Subject Decision:

- Court: Cassation Court 10th Civil Chamber
- Case No: E.2020/10865, K.2021/2234
- Date: 25.2.2021
- Lower Court: Labor Court

2. Facts

The heart of this case is grounded in the theft at a pharmacy. One defendant had been employed there for four years, while the other had been working for 1.5 years at the time of the incident. On 28/12/2009, a box of medicine was stolen from the premises, an act captured on camera. Subsequent admissions confirmed that the two defendants jointly committed this theft.

3. Central Allegation and Claim

The plaintiffs assert that, in addition to the theft, the first defendant did not properly record prescriptions dispensed to customers but instead, falsely attributed them to the other defendant before jointly selling them. This led to a discrepancy of 456,000.00 TL from the tax declaration, with goods listed in the ledger but not physically in stock. As a result, the plaintiffs are seeking both material and moral damages.

4. Key Legal Issue in the Judgement

The core legal dilemma in the decision revolves around the jurisdictional competency. In the judgement, the question arose as to whether labor court was the appropriate legal forum to handle a claim of this nature. The essence being, should the matter be treated as a labor dispute or should it be considered under the realm of torts.

5. The Ruling

10th Civil Chamber, after a thorough assessment, held that the labor court was not the appropriate jurisdiction for this case. Drawing from the Turkish Code of Obligations No. 6098, particularly Articles 49 onwards, the court highlighted that the dispute pertains to liabilities arising from wrongful acts (torts). Consequently, it should have been addressed in a civil court of first instance according to Article 2 of the Code of Civil Procedure. The initial decision from the Labor Court was thus reversed on these grounds.

For the full Turkish text of the decision, please click [here](#).

6. Jurisprudence of The Court of Cassation on The Same Matter

The Court of Cassation's General Assembly of Civil Chambers and other Civil Chambers have consistently agreed in their following decisions about which court may decide on cases related to an employee's tortious liability. They often base this on similar reasoning. A selection of relevant decisions from the Court of Cassation is provided below:

- General Assembly of Law, File No. 2019/454, Decision No. 2019/1212, Date 26.11.2019
- 10th Civil Chamber, File No. 2016/10378, Decision No. 2018/6170, Date 28.6.2018
- 13th Civil Chamber, File No. 2015/29179, Decision No. 2015/31702, Date 3.11.2015
- 7th Civil Chamber, File No. 2014/13995, Decision No. 2014/22031, Date 4.12.2014
- 10th Civil Chamber, File No. 2016/8095, Decision No. 2019/3052, Date 2.4.2019
- 10th Civil Chamber, File No. 2016/10532, Decision No. 2016/10931, Date 30.6.2016

It is our opinion that, taking into consideration the statutory provisions related to jurisdiction and the foundational purposes of specialized courts, such jurisprudence is sound.

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