

Yüksek Yargı Kararları Işığında İşletme Yönetiminde Nepotizm, Favoritizm ve Kronizm Davranışlarının Hukuki Boyutları

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Özet

Günümüzde ve geçmişte toplumların daima aradıkları ve tam olarak uygulanması için çaba gösterdikleri kavramlar arasında yer alan hak ve adalet kavramları, toplumsal düzenin sağlanması açısından büyük önem arz etmektedir. Çalışma hayatının da vazgeçilmezleri arasında yer alan hak ve adalet kavramlarının ihmal edilmesi, birçok problemi beraberinde getirebilmektedir. Çalışma hayatında ortaya çıkabilen bu problemler arasında nepotizm, favoritizm ve kronizme ilişkin davranışlar da yer almaktadır. Çalışma hayatında liyakatin ve eşitliğin önemi literatürdeki çalışmalarda sıklıkla vurgulanmaktadır. Öyle ki bu hususta meydana gelen ihmal ve kayırmacı davranışlar, işletmede çalışanların performansını olumsuz yönde etkileyebilmekte, bu durum çalışanların işten ayrılmasına dahi sebebiyet verebilmektedir. Nepotizm, favoritizm ve kronizm kavramları da söz konusu kayırmacı davranışların çeşitli görünümleri olarak literatürde yer alan kavramlardır. Söz konusu kavramlar yalnızca sosyal ve ekonomik yönleriyle değil hukuki açıdan da bir takım problemlere sebep olabilmektedir. Bu çalışmanın amacı işletme yönetiminde nepotizm, favoritizm ve kronizme yönelik davranışların hukuki boyutlarının araştırılması ve Yüksek Yargı Kararları ışığında konunun önemini vurgulanmasıdır. Çalışma kapsamında öncelikle nepotizm, favoritizm ve kronizm kavramları açıklanacak, ardından Yüksek Yargı Kararları ışığında konunun hukuki boyutları üzerine değerlendirmelerde bulunulacaktır.

Anahtar Kelimeler: Nepotizm, Favoritizm, Kronizm, Çalışma Hayatı, Hukuk.

Legal Aspects of Nepotism, Favoritism And Cronyism Behaviors

Abstract

The concepts of rights and justice which are among the concepts that societies have always sought is very important to ensure social order. Neglecting the concepts of rights and justice, which are among the indispensables of working life, also can bring many problems. Among the problems that may occur in working life are nepotism, favoritism and cronyism behaviors. The importance of merit and equality in working life is emphasized in the literature. Such negligence and favoritism can negatively affect the performance of the employees and this may cause the employees to quit their jobs. The concepts of nepotism, favoritism and cronyism are also concepts in the literature as various types of preferential treatment. These concepts can cause not only social and economic aspects but also some legal problems. The aim of this study is to investigate the legal aspects of behaviors related to nepotism, favoritism and cronyism in business management and to emphasize the importance of the issue in the light of The High Court Decisions. Within the scope of the study, firstly the concepts of nepotism, favoritism and cronyism will be explained and then the legal dimensions of the subject will be evaluated in the light of The High Court Decisions.

Keywords: Nepotism, Favoritism, Cronyism, Preferential Treatment, Law.

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INTRODUCTION

In every period of history, the concepts of justice and equality are concepts that human beings makes great efforts to provide. From the past to the present, famous thinkers have written books on this subject, and have made important studies and struggles. For example, Socrates said in one of his words: “doing injustice is worse than suffering it” and Victor Hugo said that “Being good is easy, what is difficult is being just.” (Koca, 2015, 255-256). These concepts, which are thought to be struggling from past to present, are positive concepts when they are applied correctly in working life and are the ones that can cause a number of problems when applied wrongly.

Behaviours that kind of preferential treatment in working life, may cause a negative impact on the sense of justice and performance among employees. Therefore, a lot of research has been done on the negative effects of these behaviours in the literature (Fu, 2015, 5; Kavasoglu et al., 2016, 202; Silva et al., 2019). In these studies, it is frequently emphasized that these behaviors may cause increase in job stress and intention to quit and also may cause decrease in productivity, job satisfaction and self-esteem (Arasli & Tümer, 2008). On the other hand, preferential treatment in business management may cause a number of legal problems (Aktay et al., 2009, 57).

Employers and managers in business management are bound by the applicable Labor Law Rules. Violation of the rules in question may lead to situations such as compensation, administrative fines. The rules of labor law contain the rules that employers and managers must follow. These rules generally include the application of equal pay for equal work, the principle of equal treatment, and the prohibition of discrimination. The concepts of nepotism, favoritism and cronyism, which are among the various views of preferential treatment in working life, are also among the behaviors that are prohibited by the rules of law. The employees who are negatively affected by their performance due to such behaviors can rightfully terminate their employment contracts in various situations and obtain the right to compensation.

Within the scope of this study, the concepts of nepotism, favoritism and cronyism will be briefly explained, the problems of these behaviours in labor law will be emphasized, then, in the light of the High Court Decisions, the importance of the subject will be emphasized.

Concepts of Nepotism, Favoritism and Cronyism

The concepts of nepotism, favoritism and cronyism can be expressed in different forms of preferential treatment. The concept of preferential treatment (in Turkish kayırmacılık) means; “To give unfair advantage to someone, to favor” in the TDK dictionary (www.tdk.gov.tr). Depending on the relationship between the organization or the individual who benefited from preferential treatments may appear in different ways in working life. When the studies in the literature are examined, the three most common forms of preferential treatment are nepotism, favoritism and cronyism. These types of preferential treatment, which can be expressed as management diseases, will be briefly explained below (Büte, 2011, 385; Dağlı & Akyol, 2019, 36-37).

The word nepotism comes from the Latin word 'nepos', and it means “nephew” in English. Nepotism, which is a kind of preferential treatment, is a concept which expresses that relatives are generally preferred to other employees (Kiechel, 1984, 143). In the literature, the reason why the concept of Nepotism was generally perceived as negative was that during the Renaissance period, some of the popes' wishes to find high-level jobs for their nephews. These practices in this period negatively affected the church's effectiveness and the morale of other people. Nepotism, which is considered as non-professional practices in business life, is still perceived as negative and it continues to exist (Ford & McLaughlin, 1985, 57). Particularly in the recruitment process, the relatives who have blood ties are preferred by not taking the merits of merit into consideration. The behaviours related to nepotism may adversely affect the performance of the employees and accordingly cause a decrease in the performance of the employees. Employees are disappointed in the enterprises with such nepotism behaviours and their productivity decreases due to lack of merit (Nadeem et al., 2015; Padgett et al., 2019, 106). The word nepotism comes from the Latin word 'nepos', and it means “nephew” in English. Nepotism, which is a kind of preferential treatment, is a concept which expresses that relatives are generally preferred to other employees.

Another form of preferential treatment is Favoritism. This word has two somewhat different meanings. First meaning, the general inclination to favor one person or group over others. Second meaning, concrete preferential treatment of those to whom one has personal connections, such as relatives, friends, neighbors or other acquaintances. In granting preferential treatment to a friend or family member, generally the agent misuses the position and power that he owes to the principal and the principal unable to control the agent because of asymmetric information. As a consequence, favoritism is very widespread where interactions are not transparent and officials are not held accountable for their actions (Silva et al., 2019).

The third form of preferential treatment is cronyism. This concept comes from the word crony, which originated as a piece of Cambridge University slang around the 1660s. Originally written as chrony, it was based on the Greek word khrónios, meaning “long-standing.” Crony seems to have been intended to mean “friend of long-standing”. However, the neutrality and innocence of the word was destroyed. With the change of meaning in cronyism, crony now often entails a derogatory sense of friendship with a trace of political corruption or preferential treatment about it (Khatri & Tsang, 2003, 290; Ak & Sezer, 2018, 245).

Decades of research in political science, economics, and anthropology have demonstrated that nepotism, favoritism and cronyism are bad for organizational performance. These kind of behaviors are bad for employees who are forced to weigh conflicting obligations, they are bad for coworkers who become demoralized when they suspect the worst and eventually they are also bad for organizational performance (Pearce, 2015, 43-44). In the light of High Court Decisions, the legal aspects of the behaviors such as nepotism, cronyism and favoritism will be discussed below.

Legal Assessment of Nepotism, Favoritism and Cronyism Behaviors In The Light Of High Court Decisions

Many national and international regulations that prohibit preferential treatment in business management are in force, and High Court Decisions often refer to such regulations. Considering the national resources of the Labor Law, it is seen that in the 1982 Constitution and the Labor Law No. 4857, the acts contrary to the equal treatment debt are prohibited. On the other hand, the principle of equal treatment has been dealt with in various forms in the Universal Declaration of Human Rights, the European Convention on Human Rights, the European Social Charter, the Treaty on the European Economic Community, the Convention and the Recommendations of the International Labor Organization (Aktay et al. 2009, 49-59).

The principle of equal treatment is valid in all jurisdictions, and in terms of the Labor Law, the employer should not engage in different behaviors as long as there is no just and objective reason among the employees in the workplace. In this regard, the management right of the employer is limited. In other words, the prohibition on discrimination of the employer prohibits arbitrary discrimination of the personnel working in the workplace. However, the equal treatment obligation does not require all workers to be brought to the same situation without any difference.

The sanction of the employer to act in violation of the act of equal treatment is regulated in the sixth paragraph of Article 5 of the Labor Law No. 4857. According to the provision in question, the employee has the right to demand to a fee in the amount of up to four months and the rights which he lacked. Even though the burden of proof against the equal treatment debt is in the employee, according to the regulation in the last paragraph of the said article when the employee raises evidence that strongly demonstrates the existence of the violation, the employer must prove otherwise (Ulucan, 2014, 372-378; karararama.yargitay.gov.tr, 9. H.D., 2015/28698 E., 2018/22722 K.). There are many High Court Decisions on preferential treatment that contradict the principle of equality.

In the decision of the 9th Civil Chamber of the Court of Appeals numbered 2015/28698 E. and 2018/22722 K., summarized in the following statements that (karararama.yargitay.gov.tr):

"... As a result, the educational status and performance of ... in the same department and ...'s position and performance are superior to the plaintiff. Due to objective reasons such as educational status, seniority and performance, the employer may raise rates at different rates within the framework of the right to management and may pay different amounts accordingly.

In the judgment of the local court, it was decided to accept severance pay on the grounds that the justification of the wage difference between the defendant's defense and the certificates, diplomas and other documents presented by him in favor of the other employees could not be understood but in the judgement of the High Court, it's understood that in the documents submitted by the employer, it was understood that the objective reasons for paying different amounts of wages to the employees were revealed." Approximately these statements take place in the decision.

As it can be seen in the light of the above decision of the High Court, certain objective criterias should be taken as basis for accepting the wage difference between the

employees who are doing the same work in the same workplace. It is understood that employers may raise different rates within the framework of management rights due to objective reasons such as educational status, seniority and performance and pay different amounts accordingly. The difference between the peer employees in terms of education, seniority and performance criteria has been examined in detail by the High Court and at this point it has been accepted that different wages can be paid to the employees who are objectively more qualified than the plaintiffs. So, the most important situation is “the objective criterias” which includes education, seniority, performance etc.

In the working life, it is possible to encounter preferential treatment not only in the field of private law but also in the field of public law. There is an exemplary Council of State decision which can be shown as an example for nepotism based on nepotism and kinship.

In the 12th Chamber of the Council of State's 1995/9585 E. and 1997/2206 K. Decision (emsal.danistay.uyap.gov.tr): *“plaintiff claims that the mayor has unjustly terminated his duty.*

...

The local administrative court has decided that the proceedings were not against the law in accordance with the above-mentioned bylaw as the applicant's mayor was his father at the time of his appointment as a candidate civil servant.

The plaintiff requested that the decision be examined by appealing. The local court's decision was upheld by law and procedure.” Approximately these statements take place in the decision.

In the light of the High Court judgment above, the decision of the Mayor to appoint persons who are relatives of him / her (son, brother, niece, uncle, etc.) is not approved. As it can be understood from the decision, it is desired to avoid behaviors that can be described as nepotism or favoritism related to relatives in public administration. When considered in terms of private law, although it is hard to prove the behaviors which are the examples of preferential treatment among employees is also unlawful.

In the decision of the 9th Civil Chamber of the Court of Appeals numbered 2017/7091 E. and 2017/18019 K. (karararama.yargitay.gov.tr); *“The plaintiff requested compensation for not being treated equally.*

...

The plaintiff stated that the defendant employer discriminated among the employees and requested compensation.

...

In concrete dispute, in content of the file and the content of the court decision, it is understood that the plaintiff was not treated equally by defendant. So it is appropriate to pay the labor receivables paid to the peer workers in favor of the plaintiff.” Approximately these statements take place in the decision.

As seen in the light of the precedent decision above, it is not lawful for the employer to engage in favorable behaviors among his / her employees without putting forward any objective criterias. However, this situation must be proved by the employee or if the employee raises evidence that strongly indicates the existence of the violation in question, its opposite must be proved by the employer (Ulucan, 2014: 372-378).

CONCLUSION AND DISCUSSIONS

In the literature, it is frequently emphasized that preferential treatment as nepotism, favoritism and cronyism may increase employees' intention to quit their jobs, cause job stress, decrease job satisfaction and cause decrease in productivity. At the same time it is understood that the said behaviors may constitute unlawfulness.

In working life, preferential treatment can occur in various forms. However, these behaviors must be proved with its unlawful aspects by the employee or if the employee raises evidence that strongly indicates the existence of the violation in question, its opposite must be proved by the employer.

When the decisions of the High Court are examined, it is concluded that there is no violation of the law if the employer shows a difference between the employees regarding the factors related to education, seniority or performance. Because, in this case, the employer protects and encourages qualified employees who contribute more to the enterprise in terms of wages or various social rights. On the other hand, without making objective criteria, obvious and explicit preferential treatment among the employees within the enterprise and especially preferential treatment based on reasons such as language, race, color, gender, disability, political opinion, philosophical belief, religion and sect and similar reasons are strictly banned in accordance with Article 5 of the Labor Law. From this point for example if the executives conduct favorable attitudes towards employees who are close to them in terms of their philosophical belief, this will be contrary to the law. But, as mentioned above, it is difficult to prove this situation.

As a result, preferential treatment as nepotism, favoritism and cronyism in the workplace, may be contrary to the law. This situation must be proved by the employee or if the employee raises evidence that strongly indicates the existence of the violation in question, its opposite must be proved by the employer. In this case, it is possible for the employee to claim an appropriate compensation for his wages up to four months and his / her rights which he/she deprived.

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