

**General View of the Termination Agreement in Terms of Workers'
Rights in the Termination of Employment Contracts**

***İş Sözleşmelerinin Sona Ermesinde İkale Sözleşmesinin İşçi Hakları
Açısından Genel Görünümü***

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General View of the Termination Agreement in Terms of Workers' Rights in the Termination of Employment Contracts

İş Sözleşmelerinin Sona Ermesinde İkale Sözleşmesinin İşçi Hakları Açısından Genel Görünümü

Seçil Gürün Karatepe¹

Abstract

Labour Law No. 4857 introduced the concept of job security and clarified the existence of the mutual rescission contract. A Mutual rescission contract is a contract that terminates the existing employment contract between the employee and the employer. It is based on the principle of contract. Mutual rescission contracts, which are not regulated in our legislation, are regulated in the light of the decisions of the Court of Cassation and terminate employment contracts. In accordance with the principle of freedom of contract arising from the Constitution, the parties may terminate the contract they have concluded at any time, regardless of the type of contract. Since the freedom of contract in Articles 26 and 27 of the Code of Obligations No. 6098 will also be applied to labour contracts, the legal basis mentioned brings the application to the mutual rescission contract. In this study, the conditions and features of the mutual rescission contract will be discussed within the conceptual framework and the mutual rescission contract will be evaluated in terms of labour rights. The aim of the study is to increase the level of awareness of workers about their legal rights in the mutual rescission contract. The employment relationship between the employee and the employer is not expected to last for life, but it is not in accordance with the ordinary course of life for the employee to give up the rights brought by the employment contract. At this point, the study examines how to protect the employee and how to increase the validity and level of knowledge in the mutual rescission contract. In the methodology of the study, the descriptive analysis technique was selected within the scope of qualitative research and legal sources, continuous publications and case law of the Court of Cassation were used.

Keywords: Mutual Rescission Contract, Employment Contract, Workers' Receivables, Workers' Rights

Öz

4857 Sayılı İş Kanunu, iş güvencesi kavramını beraberinde getirmiş olup, ikale sözleşmesinin de varlığını belirginleştirmiştir. İkale sözleşmesi işçi ile işveren arasında mevcut olan iş sözleşmesini ortadan kaldıran bir sözleşmedir. Dayanağını sözleşme ilkesinden almaktadır. Mevzuatımızda düzenlemesi olmayan ikale sözleşmeleri, Yargıtay kararları ışığında düzenlenmekte olup, iş sözleşmelerini sona erdirmektedir.

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Anayasadan kaynaklanan sözleşme özgürlüğü ilkesi gereğince taraflar yapmış oldukları sözleşmeyi, sözleşmenin türü fark etmeksizin istedikleri zamanda sona erdirebilmektedirler. 6098 sayılı Borçlar Kanunu'nun 26. ve 27. maddelerindeki sözleşme serbestisinin iş sözleşmelerine de uygulanması söz konusu olacağından belirtilen hukuki dayanak ikale sözleşmesine uygulamayı beraberinde getirmektedir. Bu çalışmada ikale sözleşmesinin koşulları ve özellikleri kavramsal çerçeve kapsamında ele alınacak olup, ikale sözleşmesinin işçi hakları bakımından değerlendirilmesi yapılacaktır. Çalışmanın amacı işçilerin ikale sözleşmesindeki yasal haklarındaki bilinirlik düzeyini artırmaktır. İşçi ve işveren arasındaki ilişkinin ömür boyu sürmesi beklenmez fakat işçinin iş sözleşmesinin getirmiş olduğu haklardan vazgeçmesi hayatın olağan akışına uygun bir durum değildir. Tam bu nokta ile işçinin nasıl korunacağı, ikale sözleşmesindeki geçerliliğin ve bilgi düzeyinin nasıl arttırılacağı çalışmada incelenmiştir. Çalışmanın yönteminde nitel araştırma kapsamında betimsel analiz tekniği seçilmiştir ve hukuki kaynaklardan, sürekli yayınlardan ve Yargıtay içtihatlarından yararlanılmıştır.

Anahtar Kelimeler: İkale Sözleşmesi, İş Sözleşmesi, İşçi Alacakları, İşçi Hakları

INTRODUCTION

The basis of the labour relationship is established by an employment contract. An employment contract can be defined as a contract that obliges the employee to perform work and the employer to pay the wage determined in return for the work performed. According to the freedom of contract within the scope of the Law of Obligations, the parties have the authority to regulate the terms of the contract with their free will within the limits set by the legal order. There are different reasons for the termination of the employment contract and the legal consequences are also different. In 2003, with the introduction of job security provisions in our legislation, the institution of rescission gained importance. It is possible for employees and employers to conclude a mutual rescission contract by making another agreement in order to terminate the employment contract. The mutual rescission contract has consequences for and against the employee and the employer. The results differ depending on whether the offer to conclude a contract comes from the employee or the employer. In the event of the termination of the employment contract with a mutual rescission agreement, it is not possible for the employee to benefit from the provisions of job security. The obligation to rely on a valid reason for the termination of the employment contract for the employees covered by job security is not present in the mutual rescission agreement. This issue has led to the importance and widespread use of the mutual rescission contract. (Çelik, Caniklioğlu & Canbolat, 2020, p. 464) However, the existence of the reasonable benefit of the employee in order to prevent the abuse of this contract by the employer, the principle of interpretation in favour of the employee, which is one of the most basic principles of Labour Law, reveals the necessity of examining the existence of issues such as the level of education of the employee, his or her position in the workplace, and examining which side the offer comes from. The main purpose of the study is to increase the awareness of the termination agreement, which is one of the reasons for non-termination of the

employee in terms of employee receivables, and the concept of mutual rescission contract is examined in the first part of the study, its legal nature in the second part, its establishment in the third part, and in terms of employee receivables in the fourth part.

Conceptual Overview Of Mutual Rescission Contract

Mutual rescission means 'to break the contract or exchange' and means that the contracting parties break the contract with their mutually agreed declarations of will. (Geleri, 2019) In other words, it means that the parties have the right to abolish a legal relationship that they have previously established with another legal transaction and to conclude a new contract by agreement. (Akyiğit, 2008, p. 176) Within the framework of freedom of contract, the process of terminating the contract made by the parties at any time with their common will, as mutual rescission, first emerged in a Supreme Court decision. (Nalçacı, 2022) The possibility of terminating the contract derives its source from the Turkish Code of Obligations No. 6098, primarily from the provisions regarding freedom of contract. (Bayram & Yıldırım Coşkun, 2023, p. 428) In Turkish Law, freedom of contract is a general principle and the parties may freely determine the content of a contract within the limits stipulated in the Law. (6098 Sayılı Borçlar Kanunu, madde 26) In line with this principle, the employee and the employer can terminate the contract at any time by mutual agreement. This situation is referred to as a mutual rescission agreement in practice. Mutual rescission contracts are not regulated in the Labour Law No. 4857 and the Code of Obligations No. 6098, and are tried to be resolved by judicial decisions. The main problem here is whether the employer avoids certain obligations in the termination of the employment contract. (Gerek, 2011, p. 49)

Termination of employment contracts without a valid and justified reason brings with it many obligations. Litigation expenses, the fee to be paid in case of loss of the reemployment case are some of these obligations. On the basis of liabilities, enterprises often resort to mutual rescission contract in order to get rid of risks. (Kurt & Koç, 2021, p. 122) Although there is no legal regulation in our legislation on mutual rescission, it is a contract that is frequently encountered in practice and guided by the doctrine and decisions of the Court of Cassation. Although there is no provision in the Labour Law, the regulation of freedom of contract in the Law of Obligations is extremely important for the implementation and development of the mutual rescission contract.

Although mutual rescission is not a termination situation, it constitutes a situation where the parties mutually and jointly terminate their employment contracts. However, it also means that there is no opportunity to benefit from job security provisions within the scope of Article 18 of the Labor Law. The situation mentioned is shown as the reason for the widespread use of the mutual rescission contract type. (Gerek, 2011, p. 51) Terminating the employment contract in this way can be used to render the rules regarding job security and termination of the employment contract ineffective. (Elmas, 2009, p. 100) At this point, it needs to be checked for validity; each concrete case should be examined on a case-by-case basis and evaluated in terms of the balance of interests of the parties. In other words, validity must be recognized provided that the justice of the contract has not been violated and the balance of interests must be carefully examined. (Kabakçı, 2012, p. 130) In fact, if the Supreme Court of Appeals offers a termination offer from the employer, the contract is deemed invalid unless it provides reasonable benefits to the employee in addition to their legal compensation. (Yargıtay 22 Hukuk Dairesi, 2013)

Mutual rescission contract have reasonable benefits for both the employee and the employer. First of all, for the employee, the lawsuits filed for reinstatement take a long time to be concluded. In this respect, mutual rescission contracts eliminate the loss of time for the worker. From the employer's perspective, if the employee wins the reinstatement request, he/she may be entitled to compensation equal to at least eight months' wages (the minimum part of the idle time and job security compensation). In addition, processes prior to the termination notice, such as the employee's defense and warning, can also cause employers trouble. (Gerek, 2011, p. 49) On the other hand, terminating an employment contract with a mutual rescission contract can also be used to render ineffective the regulations regarding job security or the regulations regarding the termination of the employment contract. (Şakar, 2009, p. 2)

Legal Nature of the Mutual Rescission Contract

Within the scope of Article 26 of the Turkish Code of Obligations No. 6098 'The parties may freely determine the content of a contract within the limits stipulated by law', freedom of contract constitutes the legal basis of mutual rescission. (Alp, 2008, p. 29) While the mutual rescission contract is considered a contract because it eliminates all rights and obligations of the existing employment contract, it should also be evaluated as a savings transaction for the employee and the employer. In other words, the fact that the parties can limit, change or eliminate a right arising from the contract reveals the disposition nature of the mutual rescission. (Astarlı, 2009, p. 8) However, if the parties are charged with obligations, the mutual rescission contract becomes a contract that creates mutual obligations. While the employer's obligation is to pay compensation to the employee, the employee's obligation is to terminate the performance of work. While explaining the legal nature of the mutual rescission, it would be appropriate to ask some questions. Is mutual rescission a termination? The proposal made by the employee and the employer who intend to conclude a mutual rescission contract cannot be accepted as termination. (Günay, 2009, p. 8) Termination is a unilateral declaration of will and in our law, there are two forms: temporary and permanent. Termination for a certain period of time varies according to the seniority period of the worker, according to Article 17 of the Labor Law No. 4857. Since mutual rescission is a bilateral transaction, unlike termination, it requires the offer and acceptance of the employee and employer, in other words, the parties' appropriate declarations of intent. (Ekonomi, 2006, p. 37) An employee working under an indefinite-term employment contract must give notice in accordance with the notice period, taking into account his or her seniority period. However, rescission can be made by the parties at any time in fixed or indefinite employment contracts. (Demircioğlu, Centel & Kaplan, 2021, p. 168) However, the fact that the mutual rescission contract is not termination-related does not limit the employer's right to terminate. Article 19 of the Labor Law No. 4857 specifies the procedure for the employer to terminate the employment contract with the "procedure for termination of the contract". Within the scope of this article, the reason for termination must be clearly and precisely stated and proven. However, with a mutual rescission contract, the employer does not have such an obligation and therefore the employer does not need a valid reason. This situation provides a very important

advantage for the employer. If there had been a termination, the employee would have been likely to file a reinstatement lawsuit. On the other hand, it will not be possible for the employee to file a reinstatement lawsuit with a mutual rescission contract. Therefore, the institution of mutual rescission is for the benefit of the employer and can be used by employers to get rid of debts arising from the employment contract. At this point, according to the Supreme Court, if there is any doubt about the validity of the termination, an evaluation should be made in favor of the employee. (Süzek, 2018, p. 526) Therefore, mutual rescission and termination differ due to their legal characteristics.

Another important question is, is it possible to confuse a release agreement with a mutual rescission? The release agreement regulated in Article 132 of the Code of Obligations No. 6098 is a bilateral agreement that terminates a receivable. Although it is similar to a mutual rescission agreement in this respect, the release agreement differs from a mutual rescission agreement since the debts arising from the employment contract are terminated. Nihayetinde mevcut iş sözleşmesinin ikale sözleşmesi söz konusudur. (Akyiğit, 2020, p. 321) While it is possible to create a new debt relationship, such as the payment of severance and notice pay, with the release agreement, this will not be the case in the release agreement. (Evren, 2009, p. 115) In other words, with the discharge agreement, the parties eliminate some or all of the debts arising from the employment contract, and the elimination of the contract is not realized with the discharge. However, with a mutual rescission contract, the employment contract and its rights and obligations are completely eliminated. (Astarlı, 2015, p. 46) With this, with a mutual termination agreement, the employee and the employer, who are the parties to the employment contract, may incur a new debt such as notice and severance pay, whereas with a discharge letter, the formation of a new debt relationship is out of the question. (Evren, 2009, p. 120)

Can mutual rescission contract and mediation be legally related? Mediation, which is a way of resolving disputes between employees and employers, is a practice aimed at resolving the dispute with the support of a third party, taking into account the interests of the parties. With the Labor Courts Law No. 7036 (İş Mahkemeleri Kanunu, 2017), it has become mandatory to apply to a mediator in disputes related to Labor Law. (Ekmekçi, Özekes & Atalı, 2018, p. 36) This institution is of utmost importance in terms of preventing lengthy trials. Employment contracts can be terminated either by mutual rescission contract or through the mediation system. In the mediation system, a third party other than the parties to the employment contract may terminate the employment relationship. While the mutual rescission contract is aimed at terminating the employment contract, mediation is also available for wage receivables such as overtime pay and underpaid wages while the employment contract is ongoing. However, in order to apply to a mediator, there must be a dispute. In other words, while the mediation process can be resorted to during or after the employment relationship has ended, mutual rescission is resorted to in order to terminate the employment contract. In addition, in the mediation system, the agreement of the parties has the feature of a judgment if there is an enforceability clause, while the mutual rescission does not have the feature of a judgment and does not have a greater sanction than the contract. (Ekmekçi, Özekes & Atalı, 2018, p. 96)

Establishment of Mutual Rescission Contract

The subject of the mutual rescission contract is the termination of the debt relationship between the parties. There are some principles in the establishment of the agreement. The parties to the employment contract have the right and freedom to terminate the contract by mutual agreement. In this context, the employee and the employer can also terminate the employment contract and establish a mutual rescission contract in order to eliminate the sanctions and consequences they will be exposed to as a result of the reinstatement lawsuit. The main purpose of the mutual rescission contract is to determine the date on which the employment contract will end by mutual agreement of the parties and to determine the conditions for termination. (Astarlı, 2016, p. 51) In order for the contract to be valid, the parties must have the power of discretion, be of legal age and not be restricted. (Dural & Ögüz, 2018, p. 52) However, as in other types of contracts, it is a general limitation and condition that the mutual rescission is not contrary to the mandatory rules of the Law and morality.

The reasons why one of the parties may terminate the business relationship with a disruptive innovation are extremely important. (Karakaya, 2015, p. 16) There is no formality required for the rescission, the reason for this is that no regulation has been made in the legislation. Since the Turkish Code of Obligations No. 6098 constitutes the basis for the legal basis of the termination and according to Article 12 of the Code, "The validity of contracts is not dependent on any form unless otherwise provided by law..." the form requirement is not sought in the termination contract. However, having it in writing is beneficial in terms of proof issues.

When establishing a mutual rescission contract, the employee and the employer can decide to terminate the agreement immediately or after a certain period of time. If the termination date is not determined, it must be accepted that the parties want to terminate the contract as of the day it is made. (Çelik, Caniklioğlu & Canbolat, 2020, p. 463) The parties must have made a declaration of intent when establishing the mutual rescission contract. (Savaş, 2016, p. 118) Otherwise, a mutual rescission agreement that is made to prevent the employee from benefiting from job security provisions or to relieve the employer of this obligation will create a situation that is outside of its real purpose.

Considering that the parties are not on equal footing, it is an important requirement for the employer to inform the employee about the legal consequences of the mutual rescission agreement. During the employment contract, the parties have mutual obligations that they must fulfill. When evaluated within the scope of these obligations, the employer's responsibility to inform can be reconciled with the obligation to look after the employee. The obligation of supervision is regulated in Article 417 of the Code of Obligations No. 6098 as follows; "The employer is obliged to protect and respect the personality of the employee in the employment relationship and to ensure an order in line with the principles of honesty in the workplace, and to take the necessary measures to ensure that employees are not subjected to psychological and sexual harassment and that those who have been subjected to such harassment do not suffer further harm." Considering the principle of interpretation of the termination in the interest of the employee, the obligation to inform is important in terms of its legal nature and consequences. (Özyörük, 2017, p. 2020)

Although a reasonable benefit must be provided to the employee through a mutual rescission contract, according to the legal regulation, an employee whose employment contract is terminated through a mutual termination agreement is not entitled to benefit from job security provisions. (Astarlı, 2016, p. 38) In other words, except for the termination of the employment contract by the employee for a justified reason and the termination by the employer due to the employee's breach of ethics and good faith rules in accordance with Article 25/II of the Labor Law No. 4857, the employee may receive severance and notice payments under the conditions that arise. The issue of auditing is of particular importance since the right to compensation will not arise with the signing of the termination agreement. It is subject to general provisions in terms of validity. The absence of a regulation in the legislation brings the decisions of the Supreme Court to the forefront in the validity review. If the mutual rescission contract is questionable, it is possible that it will be in the interest of the employee. This situation shows that the principles of narrow interpretation and interpretation in favor of the worker have been adopted. (Aydm, 2004, p. 5) The worker's dependence on the employer and being economically weak constitute this necessity. According to a Supreme Court decision, it is necessary to ensure the balance of interests between the employee and the employer and to check whether the mutual rescission contract is in favor of the employee. (Yargıtay 9 Hukuk Dairesi, 2008) The Supreme Court also included the worker's education and position among the evaluation criteria in the validity review.

At the date when the employment contract ends, the employee and the employer must agree on the content of the contract. (Astarlı, 2016, p. 27) In other words, the request of one of the parties to the employment contract to establish a mutual rescission agreement will not produce any results without the acceptance of the other party. (Gerek, 2011, p. 51) If the termination date of the employment contract is not specified in the content of the mutual rescission agreement, the date of the mutual rescission contract will be accepted as the termination date. In the mutual rescission contract, the parties' mutual declaration of intent is essential. Clarity in the declaration of will is of utmost importance. In other words, the proposal and acceptance must cover all essential points, be inclusive and understandable. Clarity and certainty are sought by the Supreme Court in mutual rescission agreements in order to prevent a situation that is detrimental to the employee. In cases where the parties cannot fully agree, there is a decision that the mutual rescission agreement will not be valid. (Yargıtay Hukuk Genel Kurulu, 2015) It should be kept in mind that the acceptance and offer in the mutual rescission contract made by the parties are irrevocable and can only be revoked if they agree.

In the establishment of a mutual rescission agreement, the employee and the employer must have both legal capacity and legal capacity. Legal capacity is the person having rights and obligations, while legal capacity (full capacity) requires the person to have the power of discernment, not to be restricted and to be of legal age. (4721 sayılı Türk Medeni Kanunu, madde 10) It is not possible for people who are completely incapacitated, that is, those who do not have the legal capacity to act, to sign a mutual rescission agreement; in other words, in this case their agreements will be invalid. However, it should be noted that child and young workers can sign a mutual termination agreement with the approval of their parents or guardians. (Gerek, 2011, p. 51)

In what cases will the mutual rescission agreement be invalid? The titles "Content of the Agreement" and "Absolute Nullity" of Articles 26 and 27 of the Code of Obligations No. 6098 are important in terms of explaining the invalidity of the agreement. Accordingly,

“Parties may freely determine the content of a contract within the limits set forth in the law.” and “Contracts that are contrary to the mandatory provisions of the law, morality, public order, personal rights or whose subject matter is impossible are absolutely null and void. The invalidity of some of the provisions contained in the contract does not affect the validity of the others. However, if it is clearly understood that the contract would not have been made without these provisions, the entire contract shall be absolutely null and void.” regulation explains the validity of the mutual rescission agreement. When a Supreme Court decision was examined, it was determined that the employer exerted pressure on the employee during the signing of the mutual rescission agreement, that the employee did not have the opportunity to think and evaluate the terms of the agreement, and that the employer terminated the employee's will, and as a result, the contract was deemed invalid. (Yargıtay 9 Hukuk Dairesi, 2017)

Evaluation of the Mutual Rescission Contract in Terms of Workers' Rights

The protection aspects of the mutual rescission contract are weaker for the employee than for the employer. Nowadays, it is expected that the mutual rescission agreement will be prepared in accordance with its procedure and purpose and will not violate the rights of the parties. The institution of mutual rescission can sometimes be misused by employers in order to avoid the termination sanctions required by the Labor Law and various possible lawsuits. The reinstatement that can be obtained at the end of the reinstatement lawsuit with the mutual rescission agreement, the wages for the idle period, the right to benefit from the non-reinstatement compensation, the elimination of the opportunity to earn unemployment benefits, as well as the situations of notice and severance pay, wage receivables, annual leave payment receivables will be discussed under this heading within the scope of the purpose of the study.

Job security is the protection of the worker against unfair and invalid termination by the employer, provided that there are thirty or more workers working in the workplace, that they have at least six months of seniority and that they are working under an indefinite-term employment contract. According to Article 20 of the Labor Law No. 4857, "An employee whose employment contract has been terminated must apply to a mediator within one month from the date of notification of the termination, with a request for reinstatement, in accordance with the provisions of the Labor Courts Law, on the grounds that no reason was given in the termination notice or that the reason given was not a valid reason." If an agreement cannot be reached at the end of the mediation activity, a lawsuit can be filed in the labor court within two weeks from the date the last report was prepared. If the parties agree, the dispute can be referred to a private arbitrator instead of a labor court within the same period. In case the case is rejected on procedural grounds due to filing a lawsuit directly without applying to a mediator, the rejection decision is notified to the parties ex officio. "An application may be made to a mediator within two weeks from the date of the ex officio notification of the final rejection decision." As can be understood from the wording, an employee who has job security can obtain the right to return to work by filing a reinstatement lawsuit against any unfair, arbitrary or invalid termination that he or she may suffer. If the case for reinstatement is concluded in favor of the employee, the employer has two alternative rights. In the first option, the employer must invite the employee to work within one

month. In the second option, the employer may decide not to reemploy the employee and pay the employee four months of idle wages and a job security compensation of between four and eight months, the amount of which will be determined by the court. Since the parties to the employment contract terminate the employment contract together in the mutual rescission contract, except in cases of termination, the employee is not entitled to benefit from the rights brought by job security. In other words, if the mutual rescission agreement is in accordance with the procedure, the employee does not have the right to file a reinstatement lawsuit. However, in the ordinary course of life, it is not possible for the employee to give up this right without a reasonable benefit. (Sevimli, 2009, p. 88) When the judicial decisions are examined, it is possible to reject the reemployment lawsuit if the employee has a reasonable benefit and receives the compensation he or she has requested. (Yargıtay 9 Hukuk Dairesi, 2018)

If the employment contract ends with termination and the necessary conditions are met, the employee's compensation claims arise. The employee will not be able to claim notice pay and severance pay even if the conditions are met with the cancellation agreement. (Astarlı, 2016, p. 14) The status of notice pay should also be analysed in terms of termination-related damages. The notice indemnity is a compensation that the party who wants to terminate the employment contract does not comply with the notice periods within the scope of Article 17 of the Labour Law No. 4857. When the issue is evaluated in terms of mutualisation, it will not be possible to claim the notice indemnity in the termination by mutualisation, since the consequences of the termination are not applied to the mutual rescission contract. (Yürekli, 2016, p. 132) However, if notice compensation is determined in the mutual rescission contract, it is appropriate to consider it as additional compensation. (Astarlı, 2016, p. 356) For this reason, unless there is a reasonable outcome in the employee's interest, terminating the employee's contract through a mutual rescission contract is not a reason for preference. Otherwise, there will be a situation contrary to the ordinary course of life and the rescission agreement will not be valid. (Mollamahmutoğlu, Astarlı & Baysal, 2014, p. 786)

Whether severance pay is a right that can be obtained through a mutual rescission contract is one of the important issues. Since Article 14 of the Labor Law No. 1475 is in force, the conditions for obtaining severance pay are listed within the scope of this article. The termination of the employment contract by mutual rescission contract is not among the reasons listed. For this reason, the employee will not be able to claim severance pay through a mutual rescission contract. (Gerek, 2011, p. 49) When the decisions of the Supreme Court are examined, it is possible for both compensations and even the job security compensation to be determined freely by the parties and agreed upon with a termination agreement, and as a result of this determination, the compensations should be evaluated as additional compensation. (Yargıtay 22 Hukuk Dairesi, 2018) However, in the mutual termination agreement where the employee's interests are at the forefront, the amount of compensation to be paid to the employee must be determined. There is a judicial decision that the amount determined should be net. (Yargıtay 7 Hukuk Dairesi, 2013) Otherwise, determining a compensation that is less than the benefit that the employee will receive upon termination of the employment contract may lead to the conclusion that the reasonable benefit has not been determined correctly. In other words, reasonable benefit is the determination of an amount of compensation equal to the job security, in addition to the severance and notice payments to the worker within the scope of job security. Otherwise, the mutual rescission contract may be deemed invalid. One issue that should be emphasized is that the employee's case

of filing a reinstatement lawsuit is the case of a lack of will in the establishment of the mutual rescission agreement. For example, if a reservation (reservation of certain rights) is included in the contract, the employee has the right to file a reemployment lawsuit. (Karakaya, 2015, p. 20) On the other hand, if the mutual rescission contract is valid, the worker will not have the opportunity to benefit from job security. (Çil, 2007, p. 33) On the other hand, when the importance of reasonable benefit in the mutual termination agreement is taken into consideration, the fact that notice and severance pay will not create any rights on the employee's side and considering the reasons why the employee accepted the mutual termination agreement, the parties' agreement on the payments of severance and notice pay in the mutual termination agreement will not turn the employment contract into termination by the employer. (Alp, 2008, p. 38)

Annual leave should also be taken into consideration when considering employee receivables. The right to annual paid leave and leave periods are regulated in Article 53, subsection 1 of the Labour Law as follows: 'Annual paid leave is granted to employees who have worked for at least one year, including the probationary period, from the day they start working at the workplace.' In subsection 2, a protection is provided for the health of the worker with the provision 'The right to annual paid leave cannot be waived.' Annual leave is a right that the employee cannot give up. Subsection 2 of Article 53 of the Labour Law No. 4875 is an absolute mandatory provision. (Tulukçu, 2012, p. 114) Within the scope of the relevant article, the annual leave fee must be paid to the employee over the wage on the date of termination of the employment contract. In other words, the rights and obligations arising during the continuation of the employment contract, such as unpaid wages, overtime wages, unused annual leave fees, can be claimed by the employee and should be evaluated independently of the rescission agreement. It will be possible for the employer to get rid of these receivables only with a release. (Can, 2023) It is regulated in the Labor Law that the annual leave right will be converted into a wage claim only in the event of termination of the employment contract and it should be calculated based on the last wage. Annual leave becomes a wage claim regardless of the reason for the termination of the employment contract. Is it possible to waive annual leave payment with a termination agreement? The important issue at this point is the reasonable benefit criterion. It is possible to waive annual leave payment if there is a reasonable benefit. (Gerek, 2011, p. 49) However, the parties to the employment contract can use their annual leave rights for the last year of work in the interim period until the termination date of the employment contract. In one of its decisions, the Court of Cassation ruled that the termination of an employee with 8 years of seniority was invalid on the grounds that the payment of annual leave and premium receivables, as well as the waiver of severance and notice indemnities by the employee, did not meet the reasonable benefit requirement, taking into account the seniority. (Vatansever Yanık, 2023, p. 89) The right to annual leave, wage supplements or overtime pay, bonuses, premiums, etc. are rights and obligations that have arisen, and it will not be possible for the employer to get rid of these rights except through release. (Astarlı, 2015, p. 44) After the employee signs the mutual rescission agreement, it is possible for the employee to claim his/her rights arising from the employment contract, as it is sufficient that the employment contract has been terminated. (Karakaya, 2015, p. 21) The question of whether unemployment benefits can be obtained through a mutual rescission contract is another important issue in terms of employee receivables. The unemployment

insurance system plays an important role in reducing the negative effects of unemployment on individuals and society in all economic and social issues as much as possible. This function brings with it and requires certain limitations regarding scope and beneficiaries. In our law, the conditions of entitlement and the situations requiring the termination of the allowance are regulated in Articles 51 and 52 of the Unemployment Insurance Law No. 4447. According to the relevant articles, being insured unemployed, being available and willing to work, having worked for a certain period of time and paid premiums, having the employment contract terminated for certain reasons, not having the employment contract suspended, not receiving old-age pension from the Social Security Institution and applying to İŞKUR in person by the insured can be expressed as the conditions for being entitled to unemployment insurance. However, it is necessary to have been insured for at least 600 days in the last three years and to have paid unemployment insurance premiums for the last 120 days without interruption. (Gürün Karatepe, 2022, p. 127) Considering these conditions, termination of the employment contract by mutual rescission contract is not included in the unemployment insurance conditions. For the reason stated above, the employee cannot benefit from the right of allowance through mutual rescission contract. (4447 Sayılı İşsizlik Sigortası Kanunu, madde 51)

As a result of the examinations made in terms of workers' rights, it is not possible to say that the mutual rescission contract is in favor of the worker. This situation necessitates that the mutual rescission contracts be subject to additional auditing. The most important point of this audit is whether a reasonable benefit is provided to the worker. (Mollamahmutoğlu, Astarlı & Baysal, 2014, p. 786) In a Supreme Court decision, it was stated that the principle of interpretation in favor of the employee should be taken into consideration in the evaluation of the form and content of the mutual rescission contract. (Yargıtay 9 Hukuk Dairesi, 2018) It is necessary to examine the concept of Reasonable Benefit within the framework of the Supreme Court Decisions. In this context, in the decisions of the Supreme Court based on concrete events, if the mutual rescission contract comes from the employee, the payment of severance and notice compensation is sufficient, whereas if it comes from the employer, an additional payment of 4 months' wages, which is the lower limit of the non-employment compensation, is required. (Yargıtay 9 Hukuk Dairesi, 2016) It has been decided that if the offer of a mutual rescission contract comes from the employee, the payment of severance and notice payments is sufficient and no additional payment is required. (Yargıtay 7 Hukuk Dairesi, 2016) Court of Cassation, 22nd HD. Decision No. 2014/402 E. 2014/1341 K. '...if the mutual rescission contract is executed by the employer, an additional benefit (reasonable benefit) must be provided to the employee in addition to the statutory compensation. Otherwise, it cannot be said that the employment contract has been terminated by mutual termination...' As can be seen, if the offer of mutual rescission contract comes from the employer, the employee should be provided with additional benefits in addition to compensation. In the reviewed Supreme Court decisions, it was found appropriate to make payments of 2 months and 3 months' wages. (Vatansever Yanık, 2023, p.101) The additional benefits must be reasonable for the worker according to his/her age, seniority and position. (Nalçacı, 2022) However, it should be noted that the additional benefit to be provided to the employee with the mutual rescission contract does not have to be the full equivalent of the receivables. Otherwise, the parties to the employment contract will no longer have the opportunity to make an agreement. (Çelik, Caniklioğlu, Canbolat & Özkara, 2022, p. 445) In another decision, the Court of

Cassation decided that an additional fee of 2 months' wages should be paid in the mutual rescission contract in addition to the severance and notice compensation, considering the education and title of the worker, and that this worker, who was working in the position of sales manager, had the necessary perception when signing the termination agreement and that he did not have a will disability. (Vatansever Yanık, 2023, p. 103) There is also a Supreme Court decision stating that workers with senior management status are in a position to know the consequences of the contract they have made. (Yargıtay 9 Hukuk Dairesi, 2010)

Within the scope of the statements explained, with a mutual termination agreement, the worker will risk being deprived of the right to job security, wages for the period spent idle, compensation for non-employment, severance and notice compensation, and unemployment insurance benefits. On the other hand, it is possible to determine a specific compensation in the mutual rescission agreement. In other words, unlike the compensations that will arise in the event of termination of the employment contract, the compensation in question is a wage amount that the parties can freely determine and whose legal basis is the mutual rescission contract. At this point, it should be noted that the amount of compensation to be determined by the parties should be reasonable. In a Court of Cassation decision, it was ruled that '...in the event that the employee does not benefit from signing a mutual rescission agreement, the loss of employment may be determined as minimum compensation in the mutual rescission agreement'. (Yargıtay 22 Hukuk Dairesi, 2012)

Finally, it is necessary to mention the exemption status of the compensation determined in the mutual rescission contract, which is evaluated in terms of labor rights, from income tax. As a result of the termination of the employment contract, severance pay to be paid to the employee after the conditions are met is exempt from tax, while notice pay, annual leave fee income tax is deducted. How will this situation be implemented in the mutual rescission contract? The answer to this question is that, in accordance with Article 25 (193 Sayılı Gelir Vergisi Kanunu, 1961), Clause 7 of the Income Tax Law, the amount obtained with the maximum severance pay will be exempt from income tax. The remaining part will be subject to income tax. The remaining portion will be subject to income tax. In other words, the part of the termination fee calculated based on the severance pay ceiling (the maximum retirement bonus amount paid to the highest-ranking civil servant) will not be subject to income tax, while the part exceeding it will be subject to tax as wages. (Kurt & Koç, 2021, p. 124)

CONCLUSION

The mutual rescission contract, which means that the parties to the employment contract terminate the contract by mutual consent, is not regulated in our legislation. The signing of a new contract by the employee and the employer, who are the parties of the employment contract, which takes its legal basis from the freedom of contract, is called a rescission contract. Termination of an employment contract by a mutual rescission contract is not a termination. The parties to the employment contract can terminate the contract at any time. The fact that the rescission agreement, which is the re-signing of the employment contract signed with the principle of freedom of contract by the parties to the employment contract within the scope of this principle, invalidates the provisions of

job security and creates deprivation of unemployment insurance, is taken as a basis in this study to increase the awareness of rights and obligations for the employee. The decisions of the Supreme Court provide guidance for mutual rescission contracts that do not have legal regulations in our legal system.

The employee and the employer have mutual obligations within the scope of the mutual rescission contract. While the employee's obligation is to waive the act of working, the employer's obligation can be shown as paying compensation. In addition to being closely related to Labor Law, the fact that it takes into account the principle of interpretation in favor of the employee, which is among the basic principles of labor law, and that there is a reasonable benefit in order for it to be valid constitute extremely important issues of the mutual rescission contract. Determination of the monetary amount within the framework of reasonable benefit is evaluated separately according to the characteristics of the concrete case and thus becomes equitable. The determination of the amount of severance, notice and job security compensation or additional compensation in the mutual termination agreement will vary depending on whether the termination offer comes from the employee or the employer, whether the employment contract is definite or indefinite and whether it is within the scope of job security. The indemnities specified in the mutual rescission agreement are technically not notice pay and severance pay. The main purpose is the wage paid to the employee in return for waiving the security and rights brought by the termination of the employment contract and taking into account reasonable benefit. The parties can freely determine this wage.

The validity of the mutual rescission contract differs depending on which party requests the mutual rescission offer. Determination and payment of severance and notice payments, which are important consequences of the termination of the employment contract, the existence of a reasonable benefit for the employee, and the fact that the employee did not sign the contract under duress are important criteria in terms of validity. These situations are extremely important in terms of labour gains. In the event that the mutual rescission agreement is valid, the employee does not have the right to file a reinstatement lawsuit. At this point, in order to comply with the normal flow of life, the Supreme Court requires that an additional benefit be provided to the employee and the amount of the job security compensation be determined in the contract. Although what the reasonable benefit should be will be evaluated on a case-by-case basis, according to one view, it may be beneficial to take four months' wages, which is the minimum limit of job security compensation, as a basis. (Alp, 2008, p. 36) Although the Court of Cassation has decisions that find two or three months' payment reasonable, later decisions have stated that a reasonable benefit of at least four months' wages must be given in order for the mutual termination agreement to be valid, and the Court of Cassation practice has become consistent in this direction. (Yargıtay 9 Hukuk Dairesi, 2019 & Yargıtay 22 Hukuk Dairesi, 2014) From the employer's perspective, in lawsuits filed for invalidity of termination and reinstatement, if the employee wins the reinstatement lawsuit, he/she may be entitled to a wage and compensation equal to at least eight months' wages in total, including the wage for the period spent idle for up to four months and compensation for non-employment in the amount of four to eight months' wages. Even if the employment contract is terminated by a mutual rescission contract, these regulations will be ineffective. (Şakar, 2009, p. 2) On the other hand, the worker cannot benefit from unemployment insurance benefits since termination of the employment contract by mutual rescission contract is not among the situations listed in Unemployment Insurance Law No. 4447.

Making arrangements in the legislation for the reliable termination of employment contracts with a mutual rescission contract is a necessity in terms of workers' rights and gains. It is a requirement that the amount of wages be determined precisely and clearly in the contract, that in order to be entitled to unemployment insurance benefits, a mutual rescission contract is included among the conditions of termination of the employment contract other than termination in the Labor Law. With the regulation to be made, it will be possible for the employee and the employer to terminate the employment contract in a peaceful environment. As a result, the fact that mutual rescission agreements have no legal basis, the employee is in a weak position vis-à-vis the employer, and the parties are not equal requires that the legal validity of the mutual rescission contract be carefully examined in terms of the employee. It is important to raise awareness among workers through training plans created by public institutions, unions, non-governmental organizations and academics.

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