

# Penal Clauses in Employment Contracts

by Melis Okçu

In this article, it will be explained whether the expenses incurred by an employer for the training of an employee are receivable from the employee, and the terms and conditions necessary in order to render such penal clauses valid.

Labor Law No. 4857 contains no explicit provisions regulating the payment of training expenses outlaid by the employer. However, developments in technology and the nature of the economy necessitate that certain procedures be carried out by experts. Employers tend to prefer training their own employees over employing outside experts due to the high expense of the latter's fees. Yet since training employees is an added expenditure, employers demand certain-term employment agreements in which the employee is obliged to pay punitive damages or training expenses if the agreement is terminated by the employee before the agreed termination date or by the employer with just cause.

The purpose of such conditions is to prevent the employee from terminating the employment agreement before its term, rather than to provide security for the payment of the training expenses. On this account, even if the matter is not explicitly expressed in the agreement, such articles may be named as penal clauses.

In the Court of Cassation Resolution No. 2003/14720 and Decision No. 2004/4609 dated 10.03.2004, it has been determined as follows:

"It is erroneous to consider this regulation necessarily punitive sanctions specified unilaterally to the detriment of the employee and [accordingly] reject the demand. According to the resolutions of our Court, if the plaintiff proves that he has incurred damages for the training of the employees, the employee shall pay such expenses as were spent on his account, taking into consideration the period he has worked, the number of employees that benefited from the training, and the relative percentage (spent on the training of the individual) employee in such a matter."

The local court had deemed the article a unilateral penal clause and therefore invalid. On the other hand, the Court of Cassation overturned the local court's decision, deeming the expenses educational in nature.

As witnessed herein, an exception is made to the principle of the invalidity of unilaterally specified penal clauses. If the employer provides voluntary training to his employees, the employer may oblige the employee to work within his company for a certain amount of time. Obliging the employee to pay a previously specified penalty if the employee quits his job before the determined date is, in principle, allowed. However, in such cases, for the protection of the employee, a content and a fairness test must be applied, and the penal clauses imposed under the supervision of the court.

## Training Expenses Valid for Repayment under Penal Clauses

Training the employee does not, in and of itself, grant the employer the right to request the repayment of the costs of the training. Payment of such expenses may be sought only if there is a written agreement (an additional clause to the existent employment contract of the employee, a separate contract, letter of undertaking, etc.) which explicitly states the penal clauses. However, contract provided, all expenses borne by the employer for the training of the employee may be subject to repayment: trainer expenses, tools utilized for the training, transportation, accommodation and such expenses are within the scope of educational expenses.

If the employer conducts collective trainings, the cost receivable for one employee's part is determined by the division of the total cost of the training by the number of employee participants.

#### The Service Obligation of the Employee in Return for Training

In return for the training provided by the employer, the employee is obliged to serve the employer for a specified period of time. If the employee terminates the employment contract without just cause or if the employer terminates the employment contract with just cause, the training expenses may be demanded from the employee for the reason that he has not fulfilled his duties in accordance with the signed employment contract.

If the employment contract is terminated by the employer without just cause or by the employee with just cause, the training expenses shall not be sought from the employee.

#### Conditions for the Validity of Penal Clauses Regarding Training

##### The training given and the amount due from the employee shall be proportionate

It is not sufficient to include an amount corresponding to the training expenses in the contract, or have the terms accepted by the employee, to demand the employee repay the training in full. The herein discussed purpose of repayment, as also expressed in the previously mentioned rulings, is the restitution of the costs under the penal clauses. Therefore, the maximum amount that the employer may request is cost of trainings actually conducted.

The court shall determine the requested amount of the penal clause in consideration of the costs spent. However, in this determination, it would be suitable for the court to also consider if such training has allowed the employee to acquire skills that may have a financial outcome and if the training was necessary for the employee to conduct his business in the company of origin. This way the court shall ensure that the penalty is proportionate to the training given.

##### The service period stipulated in return for training shall be bearable

Accompanying the provision of training, the employer extends the period of service contractually specified for the employee for a defined amount of time. This period specified shall be proportional and bearable by the employee.

In each case the service period shall be separately examined and decided accordingly. The court shall examine the compliance of the obligatory service period to the law taking into consideration the length, scope and cost of the training received.

#### Conclusion

The obligation of the employee to serve the employer in return for trainings and replay expenses for training in the case of a breach of contract is dependent upon the existence and terms of the contract signed between the employee and the employer.

If the employee breaches the agreement, the employer's outlays on the training of the employee are receivable from the employee. Likewise in accordance with the suitability of the sanction, the employee's freedom to work and to draft agreements shall not be limited in an excessive way.