

COURT COMPETENT IN CASES RELATING TO THE PROHIBITION OF COMPETITION: REVIEW OF THE DECISION OF BOARD OF THE UNIFICATION OF CASE LAWS OF THE COURT OF CASSATION

The issue of which court has jurisdiction over lawsuits arising from the breach of non-compete obligations, regulated under Articles 444 to 447 of the Turkish Code of Obligations (“TCO”), following the termination of an employment contract, has long caused divergences in case law between different chambers of the Court of Cassation and the General Assembly of Civil Chambers.

This uncertainty was resolved by the decision of the Board of the Unification of Case Laws of the Court of Cassation (“BUCL”) dated 13/06/2025 and numbered 2023/1 E., 2025/3 K., which was published in the Official Gazette dated 12/09/2025 and numbered 33015.

You may access the BUCL decision [here](#).

The BUCL ruled that, pursuant to Articles 444 to 447 of the TCO, the competent court in disputes arising from the breach of non-compete obligations is the Commercial Court of First Instance.

This memorandum provides an analysis of the reasoning of the BUCL’s decision in comparison with prior Court of Cassation practice.

1. Precedent Differences and Established Practices Subject to the Decision

For many years, different chambers of the Court of Cassation and the General Assembly of Civil Chambers held conflicting views as to which court has jurisdiction over disputes arising from the breach of non-compete obligations.

The divergences mainly stemmed from differing opinions between the 9th Civil Chamber, the 11th Civil Chamber, and the General Assembly of Civil Chambers of the Court of Cassation:

- **View of the 9th Civil Chamber of the Court of Cassation and the now-abolished 22nd Civil Chamber of the Court of Cassation:**

These chambers held that labor courts had jurisdiction over non-compete disputes. Their case law was based on the reasoning that the non-compete obligation is an ancillary obligation to the employment contract under the TCO, and therefore falls within the scope of the employment relationship. According to these chambers, the Labor Courts Act No. 7036 constitutes a special provision granting exclusive jurisdiction to labor courts for all disputes arising out of employment relationships, thereby excluding the general jurisdiction of commercial courts.

- **View of the 11th Civil Chamber of the Court of Cassation:**

The 11th Civil Chamber of the Court of Cassation has established in its jurisprudence that non-compete disputes fall within the jurisdiction of the commercial courts of first instance. This jurisprudence was based on the reasoning that, since the non-compete obligation regulates conduct after the termination of the employment relationship, such disputes do not qualify as “employment disputes.” The 11th Civil Chamber of the Court of Cassation further grounded its

jurisprudence on Article 4 of the Turkish Commercial Code (“TCC”), which expressly classifies non-compete disputes as absolute commercial cases, noting that matters involving trade secrets and other issues requiring commercial expertise are more appropriately adjudicated by commercial courts.

View of the General Assembly of Civil Chambers:

Although the General Assembly had rulings supporting both labor courts and commercial courts, in recent years decisions favoring the jurisdiction of commercial courts had become predominant.

2. Reasoning of the BUCL

The BUCL conducted a comprehensive review in order to eliminate the divergences in case law.

First, it recalled that Article 16/5 of the Court of Cassation Act No. 2797 authorizes the Court of Cassation to unify case law. The court emphasized that, given the clear conflict between the decisions of various chambers and the General Assembly, the principles of “trust in the judiciary” and “legal security” necessitated the unification of judgments. On these grounds, the preliminary objection requesting dismissal of the application on procedural grounds was rejected by majority vote, and it was decided to examine the merits of the case.

In its examination on the merits, the BUCL, following long deliberations, ruled that the commercial courts of first instance have jurisdiction over disputes concerning non-compete obligations. The main grounds of this decision are as follows:

a. Distinction between Duty of Loyalty and Non-Compete Obligation:

The BUCL decision emphasized that, while the employee’s duty not to compete falls within the scope of the duty of loyalty during the term of the employment contract, which is an ancillary obligation of the employment contract, the non-compete obligation agreed upon after the termination of the employment relationship is not an extension of the duty of loyalty. Instead, it is a separate contractual commitment that must be expressly agreed upon in writing, and thus, it has an independent nature from the employment contract.

b. Legal Nature of the Non-Compete Obligation:

In its decision, the BUCL highlighted that the post-termination non-compete obligation is specifically regulated under Articles 444 to 447 of the TCC. These provisions are primarily concerned with commercial life, competition order, and contractual freedom, rather than the protection of the employee. Therefore, such disputes cannot be classified as “disputes arising from the employment relationship” that would fall under the jurisdiction of labor courts. BUCL emphasized that this situation justifies the resolution of such disputes by commercial courts, as they fall more within the scope of their expertise.

Additionally, the BUCL noted that the concept of “trade secrets” within the non-compete obligation is a commercial notion requiring specialized evaluation based on market conditions, which further supports the argument that these disputes are more appropriately heard by commercial courts.

c. Absolute Commercial Case:

The BUCL stated that Article 4/1-c of the TCC expressly categorizes disputes concerning the non-compete obligation under Articles 444 to 447 of the TCO as absolute commercial cases. In absolute commercial cases, it is irrelevant whether the parties are merchants or whether the dispute is related to a commercial enterprise. The law directly classifies such disputes as commercial cases, which fall under the jurisdiction of commercial courts.

d. Assessment of the Labor Courts Act No. 7036:

The BUCL emphasized that although the Labor Courts Act No. 7036 generally grants jurisdiction to labor courts for disputes arising from employment contracts, it does not contain a special provision overriding the

TCC's classification of non-compete disputes as absolute commercial cases. Therefore, the BUCL ruled that Act No. 7036 cannot be interpreted as an "explicit contrary provision" displacing the jurisdiction of commercial courts.

3. Conclusion:

In conclusion, the BUCL ruled that commercial courts of first instance have jurisdiction over disputes arising from breaches of non-compete obligations. The decision, published in the Official Gazette dated 12/09/2025 and numbered 33015, has permanently ended the long-standing judicial uncertainty regarding jurisdiction in such cases.

For further information and assistance, please contact us at info@lbfpartners.com.

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