

EVALUATION OF PREMATURELY AGING EMPLOYEES WITHIN THE SCOPE OF OLD AGE INSURANCE

ERKEN YAŞLANAN ÇALIŞANLARIN YAŞLILIK SİĞORTASI KAPSAMINDA DEĞERLENDİRİLMESİ

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Abstract

The long-term insurance branch that covers the income losses incurred by employees in the event of old age, which they inevitably face as a social risk, is old age insurance. In general, the conditions for entitlement to a pension in case of old age arise in different ways due to the personal situation of the insured or due to the work in which he works. "Retirement in case of premature aging" provides the insured with the opportunity to retire more easily in the presence of certain special circumstances. In general, the requirement to be eligible for early aging, which is less well-known and less common in practice than the conditions for earning an old-age pension, is regulated by the 28th article of the Law number 5510 as follows: "Insured persons who have reached the age of 55 and have been found to have aged prematurely will benefit from the old-age pension if they meet other conditions other than age". Although the age requirement required to qualify for a pension has not been filled in terms of time, people who biologically age like a person who has reached the age required to qualify for an old-age pension and whose working capacity has decreased to this level are considered prematurely aged individuals. In our study, it is aimed to evaluate this special type of pension, which is generally not well known except for those who are entitled to a normal old-age pension. By examining the legal regulations and conditions of entitlement to early retirement, it will be emphasized why this special retirement condition, which is usually not found much in judicial decisions, is less common in practice and its necessity in legislation.

Keywords: Premature Aging, Old Age Insurance, Retirement Age

Öz

Çalışanların toplumsal bir risk olarak kaçınılmaz bir şekilde karşılaştığı yaşlılık durumunda maruz kaldığı gelir kayıplarını karşılayan uzun vadeli sigorta kolu yaşlılık sigortasıdır. Yaşlılık durumunda aylığa hak kazanma şartları genel olarak sigortalının kişisel durumundan yada çalıştığı işi nedeniyle farklı görünümde ortaya çıkmaktadır. "Erken yaşlanma halinde emeklilik" sigortalılara bazı özel durumların varlığı halinde emekli olma olanağını daha kolay bir şekilde sağlamaktadır. Genel olarak yaşlılık aylığını kazanma koşullarından daha az bilinen ve uygulamada daha az görülen erken yaşlanmadaki hak sahibi olma şartı, 5510 sayılı kanunun 28. Maddesinde "55 yaşını dolduran ve erken yaşlanmış olduğu tespit edilen sigortalılar, yaş dışındaki diğer şartları taşımaları halinde yaşlılık aylığından yararlanırlar" maddesiyle düzenlenmiştir. Emeklilik aylığına hak kazanmak için gerekli olan yaş koşulunu tarihsel olarak doldurmadığı halde, biyolojik olarak yaşlılık aylığına hak kazanmak için gereken yaşı doldurmuş bir insan gibi yaşlanan ve çalışma kapasitesi bu düzeye inmiş olan kişiler erken yaşlanmış bireyler olarak kabul edilmektedirler. Çalışmamızda Normal Yaşlılık aylığına hak kazanmış olanların dışında genelde pek bilinmeyen bu özel emeklilik türünün değerlendirilmesi amaçlanmaktadır. Erken yaşlanma emekliliğine yönelik yasal düzenlemeler ve hak sahibi olma şartları incelenerek, genelde yargı kararlarında da çok fazla rastlanılmayan bu özel emekli olma koşuluna uygulamada niçin daha az rastlanıldığı ve mevzuattaki gerekliliği üzerinde durulacaktır.

AnahtarKelimeler: Erken Yaşlanma, Yaşlılık Sigortası, Emeklilik Yaşı

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1. INTRODUCTION

Old age is a gradual process that leads to biological changes in a person's body, appearance and structure after a certain age. In other words, old age is a physiologically reduced condition of a person's ability to have a distinct effect (Ham, Sloane &Warshaw, 2002, p.17). Losses arising in the ability to have a distinct impact in working life are also considered as old age from the point of view of the Social Security System and are assessed as a social risk. The basis of old-age insurance is that the insured who has reached a certain age is granted the right to rest by leaving his working life (Güzel, Okur&Caniklioglu, 2020, s.503).

In order to qualify for the old-age pension, the insured must meet certain conditions. This issue should be evaluated from a very complex and detailed perspective. The conditions for the implementation of old-age insurance may also differ according to the countries. However, in general, in order to qualify for an old-age pension, it is necessary to complete a certain age, pay contributions for a certain period of time and be insured. How will premature aging retirement be determined? Are there separate legal regulations regarding this issue? Should the retirement of the early aging be dealt with physically or spiritually? If there is no separate regulation on the subject, how will the existing provisions be interpreted? In our study, we will try to find answers to these questions in the light of current regulations.

In our study, in general the condition for biologically premature aging to qualify for retirement will be evaluated by comparing the old and the new legislation. According to Law number 5510, the need for entitlement to the old-age pension in terms of those who age prematurely is stated as follows: “insured persons who have reached the age of 55 and have been found to have aged prematurely shall benefit from an old-age pension if they meet other conditions other than age” (Law No. 5510 a.28/7). The number of beneficiaries of this early retirement alternative during the period of the Social Insurance Law No. 506 is quite small. This situation is also observed in terms of judicial decisions. There has not been a judicial decision on the matter.

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2. CONDITIONS FOR ENTITLEMENT TO AN OLD-AGE PENSION IN GENERAL

2.1. General Principles

While the terms of old-age pension are being examined, the first classification between previous regulation in the legislation and the legislation currently in force is the determination of the principles of old-age pension in terms of normal conditions and facilitating conditions. In addition, there are differences in the conditions for the old-age pension according to different insurance statuses. This situation is continuing during the period of law No. 5510. The special conditions for the old-age pension are the conditions for entitlement, in which the number of paid days is less than retirement under normal conditions or retiring at an earlier age is possible. In other countries practices, it is observed that early retirement is regulated in terms of occupations that pose more risk. It is generally seen that the jobs that pose a risk are jobs in the heavy and dangerous class (Zaidi & Whitehouse,2009, p.6). Even if some jobs are not to be evaluated in the class of heavy and dangerous jobs, it is possible to retire from these jobs at an early age because they are in the category of jobs that cannot be performed with advancing age. An example of these professions is the pilot profession (Zaidi & Whitehouse, 2009, p.47).

In the legislation of our country, the early retirement status is classified according to the salary pay and age conditions depending on the work and health status of the insured, and

it is also called a special pension, facilitated pension or exceptional pension. In general, the expression "retirement in special conditions" is more often used (Güzel, Okur&Caniklioğlu, 2020, s.520). Retirement in special conditions refers to conditions such as the person's advanced age, disability, having a disabled child, and working in heavy and dangerous jobs (Arıcı, 2015, s.367).

2.2 Examples of country applications

In other countries' social security systems, there is no retirement option based on the premature aging option. When the arrangements for facilitating retirement in Italy are examined, there are early retirement options where the retirement age is reduced based on the nature of the job, long-term unemployment and child rearing. In the Italian pension system, the option of retiring 4 years earlier than the standard retirement age, provided that they have an insurance period of 30 years, is given to the disadvantaged groups (Dries, 2018, p.30).

In the Belgian social security system, early retirement is conditional on being 63 years old and insured for at least 42 years. For those with a longer career, this period may be slightly shorter. In Austria, workers in heavy and hazardous work can retire early if they are found to be worn out. In Spain, circus performers and dancers have the opportunity to retire early at the age of 60. Bullfighters can retire at the age of 55 because they work in a dangerous profession (Guy, 2018, p.35).

3. RETIREMENT OF THE PREMATURELY AGED

Old age refers to the physical and anatomical changes that occur in the human body due to time. The term "old age" changes according to the society, the person and the time in which they live. According to the World Health Organization, the age between 65-75 years refers to the early old age period, 75-85 refers to the middle old age period, and over 85 years refers to the advanced old age period (Tümerdem, 2006, s.195). In the new age determination by the World Health Organization, 66-79 refers to middle age, and 80-100 refers to old age (Çataloğlu, 2018, s.28).

The level of development of a country is important in terms of determining the level of old age. For example, in countries with a high average standard of living, 60-year-olds are not considered old, while in developing countries, this age is considered to be quite old (Özer, 2021, s.1789).

From the point of view of Social Security Law, old age is considered in terms of its negative impact on the ability to earn income rather than in terms of medical condition (Güzel, Okur&Caniklioğlu, 2020, s.503). In terms of the concept of old age and Social Security Law, the retirement age should also be revealed. Whether the employee is old or not varies according to the socio-cultural perspectives of employers, employees and the society in which they live. In general, three types of old age can be mentioned. These are chronological (historical) age, biological age (body age) and employment age (Tuncay&Ekmekçi, 2019, s.502). In terms of Social Security Law, the chronological age, which we define as the historical age, is taken as a basis. Social security systems generally accept reaching a certain historical age as the starting age of old-age insurance, regardless of whether the working power continues or not. This age, which is determined by social security, is determined as the retirement age (Şakar, 1987, s.42).

From the point of view of social security practice, the old age condition necessary to receive assistance from old age insurance usually appears as chronological age. However, insured persons may biologically age earlier or later than this age. In premature aging, a person encounters the symptoms of old age long before the age at which he should normally

encounter. In other words, it is defined as premature aging when the insured's body age is higher than his historical age (Zielinsky, 2020, p.35).

The situation of the prematurely aged in terms of old-age insurance is determined by article 28/7 of the Law No. 5510. However, there is no description of premature aging in the article. We see that the definition of premature aging in the Article 25/1 of the Regulation on the Determination of the Rate of Loss of Working Power and Earning Power in the Profession. According to this “Having other conditions other than the age requirement stipulated in the law for the old-age pension and of the insured persons who have reached the age of 55, biologically, those who have reached this age and have aged to the degree of that their working capacity has decreased, and have been determined to be such according to the provisions of the regulation are deemed to be prematurely aged”. In addition, again according to the provision of the 32nd Article of the Social Insurance Health Procedures Regulation, “Among who have reached the age of 50, but have not reached the age of benefiting from the old-age pension, those who have aged biologically to the extent of a person who has reached this age (of old-age pension), and whose working capacity has fallen to this level, are considered to have aged prematurely”.

In foreign country practices, in the Belgian Social Security legislation, which contains regulations close to the law No. 506, although premature aging is not mentioned directly, the possibility of early retirement has been introduced only to civil servants in cases of permanent physical disability, if they fulfill the conditions of being insured for at least ten years and reaching the age of 63 (Özer, 2021, s.1790).

3.1. Determination of Premature Aging

In general, chronological age is taken as a basis in the practices of old-age insurance. Premature aging is essentially a phenomenon that needs to be medically determined. Regarding the matter, according to the Article 25/1 of the Regulation on the Determination of the Rate of Loss of Working Power and Earning Power in the Profession, in the detection of premature aging, attention has been drawn to the biological decrease in working power with the statement: “Having other conditions other than the age requirement stipulated in the law for the old-age pension and of the insured persons who have reached the age of 55, biologically, those who have reached this age and have aged to the degree of that their working capacity has decreased, and have been determined to be such according to the provisions of the regulation are deemed to be prematurely aged”. In addition, according to the article 14/1 of the Regulation of Disability Transactions, premature aging has been regulated as: “... those who are determined to be in the state of physiological and psychological state of aging as well as cognitive aging, which is the loss of attention, perception, memory, comprehension and abstraction are considered to have aged prematurely” (Akin, 2007, s.166). In the relevant regulation, the phenomenon of premature aging is included in a separate section. In fact, it is possible to say that the regulation focuses more on disability determination. Therefore, it can be said that the regulation does not consider premature aging as a disability. In addition, if premature aging has occurred due to the working conditions at the workplace, it may be considered necessary to qualify this condition as an occupational disease (Özer, 2021, s.1792;Erol, 2011, s. 49).

We can say that the issue of premature aging is not considered by the legislator as a disease or disability, the issue is regulated as a unique phenomenon. However, when a premature aging condition occurs, this condition is a condition that will be valid for a person until he dies. For this reason, control examinations should not be carried out as in the case of disability of those who age prematurely. However, the legislator specifies the principles of

regulation of control examinations of prematurely aged people in provisional Article 4/3 of the Regulation on Social Insurance Transactions (Özer, 2021, s.1793).

The request for the detection of premature aging should be expected to come from the insured first. Yet, the employer may also apply to health institutions to determine that the insured person he employs is aging prematurely. The premature aging status of the insured will be determined based on the report of the health board of the institution, which will be issued as a result of the application of both the insured and the employer to the medical institutions. In the article 14/2 of The Regulation on Disability Detection Procedures, the regulation that goes as “...In these determinations; psychiatry, physical medicine and rehabilitation, internal diseases, chest diseases and cardiology, especially the reports of the health board organized by the relevant branches are taken as basis” is included. In the article 5/1 of The Regulation on the Loss of Working Power, the institutions authorised to issue a health board report are listed as “a) Ministry of Health education and research hospitals, b) State university hospitals, c) Military hospitals affiliated to the Turkish Armed Forces and d) In the absence of the hospitals specified in paragraphs (a), (b) and (c) in the provinces where the insured reside, full-fledged hospitals of the Ministry of Health”. The loss of working power and the loss of earning power in the profession are determined not by the health board, but by the health board of the institution. This has been clearly specified in the article 55/3 of the The Regulation of Social Insurance Transactions. The right of the insured to object to the decision of the board is not explicitly included in Article 58/4 of the law No. 5510. However, the objection procedure regarding other decisions made by the board should also be applied in cases of premature aging. According to the circular No. 2018/38 of the Social Security Institution on the subject, objections to decisions made by the institution regarding premature aging in accordance with Article 58 of the law will be evaluated by the High Health Council of Social Insurance. Despite this, a judicial remedy may be applied against the institution that does not implement the decision in favor of the insured (Özer, 2021, s.1795).

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3.2.Conditions for Qualifying for an Old-Age Pension Due to Premature Aging

We have also come across the regulations regarding entitlement to the old-age pension due to premature aging in the periods before the enactment of the law No. 5510. Insured persons working under a service contract could benefit from an old-age pension in accordance with Article 60 / D of the Social Insurance Law No. 506 if it was determined that they were aging prematurely. For this purpose, the insured had to have completed the age of 50 and paid a premium of 5000 days, or have paid a premium of 3600 days, have been insured for at least 15 years and have completed the age of 50. Since female insured persons can already retire when they reach the age of 50, it can be said that this provision makes more sense for male employees (Şakar, 1987, s.189).

While determining the conditions required for the old-age pension, the insured persons are categorised into three: those who were insured before the Law No. 4447 dated 08.09.1999, those who had insurance between 08.09.1999 and 01.10.2008, and those who were insured after the said date. In general, when we examine the issue, we can state that those in the first group are entitled to early retirement from aging by providing the conditions set out in provisional article 81 of the law No. 506. In terms of those in the second group, two options have been indicated as being deposited a premium of 7000 days on behalf or being insured for 25 years and having a premium deposited of 4500 days on behalf (Başterzi, 2006, s.161). In other words, those who were insured under the law No. 506 before the enactment of the law No. 5510 will be subject to the provisions of the law No. 506, even if they retired during the new law (Sözer, 2021, s.382).

During the period of the law numbered 1479, the possibility of early retirement has not been introduced for the insured persons covered by Bağkur. On the other hand, we can say that this right has been introduced to independent employees with the law No. 5510. In fact, it is possible to reach such a conclusion from the article 56/5 of The Regulation of Social Insurance Transactions that goes as “Those who are insured before the effective date of the law and are considered insured within the scope of paragraph (b) of the first paragraph of Article 4 of the Law are entitled to an old-age pension if they fulfill the conditions set out in the seventh paragraph of Article 28 of the law” (Özer, 2021, s.1797). There was no specific regulation in the Pension Fund law in terms of the retirement of the prematurely aged. In this law, there was an opportunity for early retirement only for disabled people. We can say that with the entry into force of the law No. 5510, this opportunity will also be introduced for civil servants who are subject to this law. Indeed, the provisions of the article 56/5 of The Regulation of Social Insurance Transaction should also be applied for this category of employees in the same way (Özer, 2021, s.1798). According to the current regulation on premature aging, in Article 28/7 of the law No. 5510, ‘Insured persons who have reached the age of 55 and have been found to have aged prematurely will be able to benefit from an old-age pension if they meet other conditions other than age’. Within the scope of the application of this provision, insured persons who are insured for the first time after 01.10.2008 and subject to the provisions of 4/1-a, 4/1-b and 4/1-c are meant. On the other hand, those with 4/1-a and b who were insured before the enactment of the law No. 5510 and whose insurance coverage was ongoing, or who have started work again during the period of law No. 5510 will benefit from this provision related to premature aging. The extension of this provision to all insured persons has been more appropriate compared to the previous regulations (Mutlay, 2014, s.430; Sözer, 2021, s.405; Bulut, 2013, s.552). Regarding the retirement of prematurely aged people, the determination of the same ages in terms of men and women is criticized. Because, even in normal retirement, an earlier retirement age was determined in favor of women due to biological and social reasons; this situation should not have been ignored in the case of premature aging (Polat, 2011, s.80; Kayırgan, 2014, s.134; Özer, 2021, s.1801).

3.3. Analysis of the Principles Related to the Implementation of Retirement in Case of Premature Aging

The pensions of the insured start from the beginning of the month following the date of their written request. If the prematurely aged people request an old-age pension before receiving the health report that shows their condition, the old-age pension will be connected, effective from the beginning of the month following the report date, since the report date will be the date after the monthly request dates. In addition, according to the General Decree of the Social Security Institution numbered 2018/38 on the subject, in order to connect the old-age pension after the effective date of the law, the insured must pay all kinds of debts, including general health insurance premiums, as of the date of making a written request (Özer, 2021, s.1802).

The number of applications for premature aging retirement is generally low in our country. The most important reason for this is that the possibility of such a pension is unknown to the insured. Another reason is that the insured prefer retirement less under article 28/7 of the law No. 5510. The main reason for this is that the age of 55, which is determined as the upper limit, is quite high and the 5400 premium paying condition is determined as high (Özer, 2021, s.1802). In addition, when we compare premature aging retirement with the retirement status of those who had disability before starting to work as insured for the first time, according to article 28 / 4 of the law No. 5510, provided that he has at least fifteen years of insurance and pays at least 3960 days of disability, old age and death insurance premiums, old age pension could be issued before the age 55 (Özer, 2021, s.1803).

Among those who are below 60% in terms of disability and cannot earn the disability pension for this reason, the ones in the range of 50%-59%, the insured persons for at least 16 years and who paid premium of 4230 days; and the ones in the range of 40%-49%, the insured persons for at least 18 years and who paid premium of 4680 days will retire according to article 28/5 without age requirement if they paid old age and death insurance premiums. In this alternative condition, the absence of age conditions is considered more advantageous than premature aging retirement. In such a case, it will be possible for those with a disability rate of less than 40% to use the premature aging retirement pension. Only in this case, it is necessary to determine whether the premature aging condition leads to loss of the labor force between 1% and 40%. The retirement age will gradually increase to the age of 65 in 2048 in accordance with the provision of Article 28/2-b of the law No. 5510. Given that the retirement age of premature aging is 55, it will mean a big loss in working power, so it may be possible for a person to choose other facilitated retirement opportunities in this case (Göktaş, 2015, s.213; Çavuş, 2021, s.85-87).

3.4.The case of starting work again for premature aging retired persons

Article 30 of the law No. 5510 provides for the termination of old-age pensions in the event that those who are entitled to an old-age pension return to working life. Accordingly, if these people have been insured after 2008, their old-age pensions will be cut. The only exception to this situation is those who have started working again under 4/1-B. This situation will be valid for those who are eligible for premature aging retirement. Those who were insured before 2008 will pay social security support contributions or their old-age pensions will be cut (Güzel, Okur ve Caniklioğlu, 2020, s.598-604).

3.5.Evaluation of Premature Aging Retirement Together with Other Retirement Options That Cause a Reduction in the Age Limit

According to the law No. 5510, there is the possibility of a discount from the age limit in two cases. First of all, a discount can be given to a female insured who has a disabled child who needs someone else's care, according to the age limit. Secondly, discounts can be made from the age limit of some insured persons who are covered by the actual service period increase. Since there is no explicit age determination in the provision regulating premature aging retirement at this stage, it is appropriate to take the age of 55 as the age limit. The retirement status and the premature aging status can be evaluated together according to the age limit. When the insured reach a certain age, retirement due to the age limit, which means being forced to retire against their will in accordance with social security legislation, will be the case for those insured under 4/1-c who are public employees and insured before 2008. According to article 40 of the law No. 5434, 'The age limit requiring the termination of the duties of the participants is the date they reach the age of 65. Article 44 of the law No. 5510 does not explicitly regulate retirement beyond the age limit. However, since the age limit is determined under the age of 55 in some professions, it becomes unnecessary to apply for an premature aging retirement pension (Özer, 2021, s.1806).

3.6.The Impact of Premature Aging Retirement on the Working Relationship

It is a matter of debate whether the premature aging condition should be the reason for termination by the employer. There is no problem if the employee leaves the job due to premature aging and wants to retire. On the other hand, when the employer wants to terminate the service contract of his employee on the grounds of premature aging, he has to determine this situation through the Social Security Institution. When the employer wants to terminate the service contract of his prematurely aged employee, he should apply the performance evaluation system. Thus, premature aging can be put forward as a valid reason for termination (Gürsel, 2020, s.179). According to some opinions in the doctrine, in order for the employee's

service contract to be terminated in case of premature aging, this situation should cause negativities in the workplace (Ünal, 2018, s.336-338).

Premature aging occurs in the form of cognitive aging, which is the loss of functions such as attention, lack of perception, memory loss, comprehension and abstraction. It cannot be based on the reason that the employee has reached the retirement age only when the service contract is terminated by the employer. It can be argued that the termination is due to the cognitive or physiological insufficiency of the employee (Özer, 2021, s.1808; SarıbayÖztürk, 2019, s.927).

4. CONCLUSION

Premature aging is the fact that the biological age of the employee is greater than his chronological age for various reasons. In our social security legislation, this situation is not considered as illness, or disability. It is an option that allows the employee to retire more easily when the insured reaches the age of 55, if he meets all the conditions other than age. It is observed that the condition of easier entitlement to the old-age pension provided to the insured with the enactment of the law No. 5510 is a much less applied way compared to other conditions.

In general, the fact that it is more convenient for the insured to prefer other conditions of retirement with special conditions that lead to entitlement to an old-age pension is the most important reason for the lack of demand for premature aging retirement. In recent years, the retirement age has increased and the upper limit for early retirement has been increased from the age of 50 to 55 years. Thus, the age of 55 appears to the insured as a high age and loses its function in the provision in which the issue is regulated. Therefore, in order for the provision to be implemented, it is necessary to amend the provision in the form of ensuring other conditions other than age. The change that needs to be made is to set a premium paying requirement to be determined in a way that will cover all the insured who will benefit from this article, and the amount of the premium should also be determined in a lower amount than other old-age pension options.

As another alternative way, the legislator's provision on premature aging could be removed from the legislation, recognizing premature aging as a kind of disability and associating premature aging with disability insurance or early retirement of the disabled. However, such an arrangement will be able to put the conditions for entitlement to an old-age pension, which are already in a complicated situation, into an even more complicated situation.

Human life expectancy is gradually increasing with the change of living conditions throughout the world. Applying for premature aging retirement is not a very common situation. On the other hand, in countries that are trying to ensure the actuarial balance of social security systems, premature aging retirement shows a situation whose existence may cause economic damage to the actuarial balance that is being tried to be established.

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