

## **Constitutional Court Annulled the Sanction for Non-Attendance to Mandatory Mediation**

Article 18/A of the Law No. 6325 on Mediation in Civil Disputes ("Mediation Law") stipulates that, should the mediation process end due to one of the party's failure to attend the first meeting without a valid excuse, that party shall be liable for all litigation costs, regardless of whether they partially or fully succeed in the subsequent lawsuit. In addition to that, no attorney fee shall be awarded to such party. The Constitutional Court recently examined unconstitutionality allegations brought against the relevant provision, found the rule unconstitutional and decided to annul it with its decision no. 2023/160 E., 2024/77 K. dated March 14, 2024.

### The Constitutional Court's Decision

Çorum Consumer Court filed an application before the Constitutional Court against the abovementioned rule on grounds that:

- In disputes where mediation is a mandatory cause of action, one of the parties may wish the dispute to be heard before a court,
- In this context, by not participating in the mediation session, such party may implicitly choose to not pursue a settlement before a mediator,
- However, the contested rules impose a disproportionate restriction on the right to access to court by making such parties liable for all litigation costs even if they are ultimately vindicated in the dispute.

The Constitutional Court examined the contested rules in respect of the right to property, right to legal remedies, and the limitation of fundamental rights and freedoms regulated respectively under Articles 35, 36 and 13 of the Constitution.

- Regarding the Right to Property

The Constitutional Court characterized the litigation costs laid upon the party which fails to attend the first mediation meeting without a valid excuse and the attorney fee that are not awarded in favor of such a party as "property" within the scope of Article 35 of the Constitution, and reached the conclusion that the contested rules limit the right to property.

- Regarding the Right to Legal Remedies

The Constitutional Court concluded that, rejecting a party's request from the court to (i) rule on attorney fees and litigation costs against the counterparty and (ii) lay the expenses incurred during the proceedings on the other party restricts the right to access to court, which means the right to bring the dispute before the court and seek an effective resolution to the dispute.



