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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.



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Regarding the Restriction of Fundamental Rights and Freedoms

The Constitutional Court emphasized that the legal rules restricting the rights to property and access to court must be specific, accessible, and foreseeable regulations with no room for arbitrariness.

The decision stated that the right to property may be restricted for public interest purposes, and that the rights and freedoms stipulated in other articles of the Constitution, along with the duties imposed on the state, may provide a special basis for restricting the right to access to court under the scope of the right to legal remedies.

Following these main assessments, the decision emphasized that the development of alternative dispute resolution mechanisms, which safeguard the rights and interests of the parties with due care and yield effective results, aim to fulfil the state's constitutional duty to prevent unnecessary prolongation of legal proceedings. The decision also stressed that the contested rule intends to ensure the participation of the other party in the mediation. Indeed, regardless of the outcome of the proceedings, the burden to bear all litigation costs and the forfeiture of the attorney fee would, to a certain extent, deter non-attendance to the mediation meeting. In this regard, the contested rules fundamentally aim to enhance the efficacy of the mediation process and fulfill the state's obligation to provide effective remedies to prevent unnecessary prolongation of legal proceedings.

Nevertheless, the Constitutional Court remarked that the burden imposed on individuals should not lead to excessive and disproportionate consequences while ensuring the fulfillment of the state's obligation to provide effective remedies to prevent unnecessary prolongation of proceedings. In this respect, the Constitutional Court acknowledged that the contested rules effectively compel the counterparty to attend the mediation meeting. However, it ruled that imposing a full liability on litigation costs and denying attorney fee for those who fail to attend the first meeting without a valid excuse - without providing exceptions or an upper limit with respect to the rightfulness of the persons ordered by a judicial decision - places an excessive burden on the parties. The Constitutional Court reached the conclusion that this fails to maintain a fair balance between public interest, the right to property and the right to access to court, and thus constitutes a disproportionate restriction. Accordingly, the Constitutional Court decided to annul the aforementioned rules.

Effective Date

The Constitutional Court's decision was published in the Official Gazette (32521) dated April 18, 2024, and the annulment will enter into force nine months after the publication date, i.e. on January 18, 2024.

Remarks



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As indicated in the dissenting opinion of the decision, the Constitutional Court reviewed a similar annulment application in 2018 and rejected the annulment request for a similar rule that applies for mandatory mediation in labor disputes under the Labor Courts Law No. 7036 ("Labor Courts Law") with its decision no. 2017/178 E., 2018/82 K. dated July 1, 2018. The referred decision emphasized that the contested rules establish who will bear the litigation costs based on the effort made to attend the first mediation meeting in good faith, and that this approach aligns with the constitutional principle of resolving disputes swiftly and economically. The Constitutional Court deemed the rule necessary, convenient, and proportionate for achieving this goal. In addition, it was pointed out that failure to attend the first meeting of the mediation without a valid excuse would only cause liability for litigation costs and does not prevent the non-attending party from seeking judicial remedies. Considering that the referred decision was rendered when the mandatory mediation was still relatively new, such an assessment may have been made to protect and promote the effective functioning of this newly introduced alternative dispute resolution mechanism. However, the Constitutional Court appears to have changed this approach with its recent decision. In this context, the parallel rules in the Labor Courts Law can also be annulled in scope of the principles of legal security and legal certainty. On the other hand, in light of the Constitutional Court's indication to the lack of exceptions or a defined upper limit, the legislator is anticipated to make arrangements concerning mediation in the Mediation Law and in other laws within the next nine months in order to ensure the deterrence of unexcused non-participation in mediation, which is regarded as an effective and efficient mechanism to alleviate the workload of the judiciary.