

The Constitutional Court Annulled the Provision on the Sanction for Failure to Attend the First Mediation Meeting

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As part of the concrete norm control, an application was filed to the Constitutional Court with the claim that paragraph 11 of Article 18/A ("**The Annulled Provision**") of the Law No. 6325 on Mediation in Civil Disputes, stipulating the sanction to be applied in case of failure to attend the first meeting, violates the right to legal remedies regulated by the Constitution.

In this context, the Constitutional Court has considered the following:

- The costs of the proceedings for which the party not attending the first mediation meeting is held responsible and the attorney fee that will not be awarded in favor of this party are covered by the right to property secured under Article 35 of the Constitution.
- The Annulled Provision restricts the right to property and access to court by stipulating that the party who proves to be right at the end of the proceedings shall be deprived of the legal costs and attorney's fees to be collected from the counterparty.
- The Annulled Provision shall be evaluated under the three sub-principles of proportionality: *adequacy*, *necessity* and *proportionality stricto sensu*. The Annulled Provision is *adequate* in terms of fulfilling the purpose of ensuring participation in mediation proceedings. Such a requirement is also *necessary* as it responds to a public interest in terms of ensuring the functioning of the mediation institution. On the other hand, the Annulled Provision imposes an excessive financial burden on individuals, disrupts the fair balance between the public interest and the fundamental rights of individuals, and thus causes a *disproportionate* restriction.

Despite the opposing votes of two members who argued that the Annulled Provision excludes the cases of non-attendance to the first meeting due to an excuse and aims only to prevent behaviors that would arbitrarily disrupt the mediation procedure and therefore meets the criteria of the principle of proportionality, it was decided by majority vote to annul the referred provision.

The Decision will enter into force nine months after its publication in the Official Gazette.

The full text of the Decision can be accessible via [this link](#). (Only available in Turkish)

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