

## The Turkish Constitutional Court Has Annulled the Provision Related to Litigation Costs and Deprivation of Attorney's Fees for Parties Failing to Attend the Mediation Session as Stipulated by The Mediation in Legal Disputes Act.

Under Article 18/A, paragraph 11 of the Mediation in Legal Disputes Act No. 6235 ("Act"), it was stipulated that a party who does not attend the mediation session will be held liable for all litigation costs and will not be awarded attorney's fees, even if they prevail in the lawsuit. This provision has been declared unconstitutional and thus annulled by the Constitutional Court ("CC") in its decision dated March 14, 2024 (Case No. 2023/160E., Decision No. 2024/77K.), published in the Official Gazette No. 32521 on April 18, 2024 ("Decision").

The text of the relevant legal provision prior to the annulment, with the annulled part **emphasized**, is as follows:

"In cases where the mediation process ends due to one party's unjustified failure to attend the first meeting, the non-attending party is noted in the final record **and this party will be held liable for the entire litigation cost even if they partially or fully prevail in the lawsuit. Furthermore, no attorney's fees will be awarded in favour of this party.** If neither party attends the first meeting, leading to the termination of the mediation process, each party bears their own litigation costs."

The CC's Decision states that imposing the full burden of litigation costs on a party who, despite not attending the initial mediation session without a valid excuse, later proves to be justified in the subsequent trial, and additionally depriving them of attorney's fees, violates the property rights and the right to a fair trial as enshrined in Articles 35 and 36 of the Constitution, respectively.

Consequently, the CC has adopted the view that this imposed an unjust and excessive financial burden on the party who ultimately prevails in the litigation, representing a

disproportionate limitation of the abovementioned rights and has declared the relevant part of the statutory provision unconstitutional, thereby annulling it and setting the annulment to take effect nine months after the publication of the Decision, i.e., on January 18, 2025, to allow the legislative gap created by said the annulment to be filled without detriment to the public interest.

The full Turkish text of the Decision can be accessed [here](#).

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