

The Constitutional Court Annulled the Provision under Article 166/1 of the Code of Civil Procedure Regarding the Binding Nature of Consolidation Decisions Rendered by the Second Court.

I. Introduction

By its decision dated 17 June 2025, the Constitutional Court of Turkey annulled the rule set forth under Article 166/1 of the Code of Civil Procedure No. 6100 (“CPC”), which provided that “in related cases, the decision on consolidation rendered by the second court shall be binding on the other court.” The decision was published in the Official Gazette dated 25 September 2025 and numbered 33028 and entered into force on the same date pursuant to Article 153/3 of the Constitution.

In this alert, we assess the Constitutional Court’s decision.

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

II. Contested Provision and Annulment Application

Pursuant to Article 166/1 of the CPC;

*“In cases filed before civil courts of the same degree and status within the same judicial district, if there is a connection between them, such cases may be consolidated in the court where the first case was filed, either upon request or ex officio, at any stage of the proceedings. The decision on consolidation shall be rendered by the court where the second case was filed, and **this decision shall be binding on the other court.**”*

The contested rule was the last sentence of the paragraph, i.e., the provision that “the decision on consolidation shall be binding on the other court.” In the annulment application, it was argued that since a consolidation decision may only be challenged together with the final judgment, it was not possible to review the decision rendered by

the second court, thereby violating the principles of the rule of law, the right to legal remedies, the guarantee of a lawful judge, and judicial independence.

III. Assessment of the Constitutional Court's Decision

In its decision dated 17 June 2025, the Constitutional Court observed that, due to the binding nature of the consolidation decision under Article 166/1, the decision of the second court irreversibly changed the judge competent to hear the case.

The Constitutional Court emphasized that the contested provision did not include any mechanism to review arbitrary consolidation decisions issued in the absence of the conditions required for related cases. Therefore, it held that the rule was incompatible with the constitutional guarantee of a lawful judge set forth under Article 37 of the Constitution.

In its reasoning, the Constitutional Court underlined that for a rule enabling a case to be transferred from the court where it was first filed to another court not to infringe upon the guarantee of a lawful judge, it must rest on legitimate and reasonable constitutional grounds and also incorporate sufficient safeguards against arbitrary practices.

Court further noted that, since consolidation decisions could only be appealed together with the final judgment, even if the decision was unlawful, the case could not return to the first court unless another ground for reversal was found in the appellate review.

In their dissenting opinions, some members argued that transferring case files between courts of the same level and within the same judicial district did not amount to a change of court. They further maintained that Article 37 of the Constitution deliberately refers to “the court to which a person is subject by law” rather than “the judge,” thereby securing the court itself rather than an individual judge. The dissenting members also underlined that the contested rule was consistent with the principle of procedural economy.

IV. Conclusion

By its decision dated 17 June 2025 and numbered 2024/237 (E.) – 2025/137 (K.), the Constitutional Court annulled the phrase “...and this decision shall be binding on the other

court.” under Article 166/1 of the CPC. Accordingly, consolidation decisions rendered by the second court will no longer be binding on the other court.

However, it remains unclear whether, following the annulment, consolidation decisions rendered under Article 166/1 may now be challenged through an independent appeal mechanism. Pursuant to Article 168 of the CPC, consolidation decisions issued by first instance courts may only be appealed together with the final judgment through the regional courts of appeal, and those issued by regional courts of appeal may only be appealed together with the judgment before the court of cassation. In practice, an erroneous consolidation decision alone does not constitute a ground for reversal. Furthermore, there is no legislative provision regulating how proceedings should continue in cases where, after the annulment, the court that is no longer bound by the consolidation decision returns the case file. Given that the annulment was based on the reasoning that consolidation decisions are not subject to independent appellate review and that review only together with the final judgment does not provide sufficient safeguard, we believe that this uncertainty should be addressed through legislative amendment in light of the Constitutional Court’s reasoning.

Dr. iur. Onur Ergönen, Managing Partner
Av. Gamze Güngör Bulut, Senior Associate
Zeynep Arslan, Intern