

# Constitutional Court eases procedural burden by annulling key mediation rule

Mine Güner and Gözde Özen  
Kenaroglu Avukatlik Burosu  
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## TURKEY

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- Under Paragraph 11, Article 18/A of the Code of Mediation in Civil Disputes, parties who failed to attend the first mediation meeting without a valid excuse were responsible for all costs
- The court found that the provision imposed significant financial burdens on parties who did not attend mandatory mediation meetings, but were later found to be justified
- The provision was annulled as it disproportionately restricted rights and violated the Constitution

The Constitutional Court has annulled a provision whereby parties who failed to attend the first mediation meeting without a valid excuse were fully responsible for all the costs of the proceedings, even if they were justified in the case. The decision aims to ensure a fair balance of benefits for both parties during mediation proceedings, protecting them from excessive financial burdens.

## Background

Turkish civil law requires mandatory mediation before initiating certain civil court actions, such as commercial cases seeking compensation.

A first-instance court in Çorum applied to the Constitutional Court to annul the underlined sentences of Paragraph 11, Article 18/A of the Code of Mediation in Civil Disputes:

“ *In the event that the mediation activity is terminated due to the failure of one of the parties to attend the first meeting without a valid excuse, the party who did not attend the meeting shall be stated in the final minutes and this party shall be held responsible for the entire costs of the proceedings even if it is partially or fully justified in the case. In addition, no attorney fee shall be awarded in favour of this party. In the lawsuits to be filed upon the mediation activity being terminated due to the failure of both parties to attend the first meeting, the trial expenses incurred by the parties shall be left on their own.* ”

This provision deemed that a defendant's absence from mediation meetings was an implicit rejection of settlement with the plaintiff. However, it also placed a heavy burden on defendants who chose not to attend the meetings.

## Constitutional Court decision

The Constitutional Court conducted a detailed analysis of the provision's intent and the financial burden that it created. Mandatory mediation was introduced as an alternative method for resolving disputes to help save time and reduce court-related expenses. The active participation of both parties in mediation is clearly crucial to reach a mutual settlement.

The Constitutional Court acknowledged that the provision served as an effective means of ensuring participation in mediation proceedings. However, the provision imposed significant financial burdens on parties who did not attend mandatory mediation meetings, but were later found to be justified in court. The court noted that the provision restricted property rights and access to the court system and, ultimately, disrupted the fair balance between public interest and the protection of fundamental rights.

As a result, the provision was annulled on the ground that it disproportionately restricted rights and violated the Turkish Constitution. The annulment will take effect on 18 January 2025. Until then, a similar regulation is expected to be introduced in line with the principle of proportionality.

## Impact on IP cases

While mandatory mediation is a prerequisite for all IP-related court actions involving compensation claims, the drawbacks of Paragraph 11, Article 18/A have been evident. Despite the low likelihood of reaching a settlement due to various factors in specific cases, parties often attended mediation meetings simply to avoid being burdened with all court costs. Such unproductive meetings could impose additional time and financial strains on the parties involved. In cross-border disputes, the provision posed an even greater challenge since foreign entities must be represented by a local lawyer during mediation, whereas local entities can participate themselves.

Arguably, the annulment of the provision is thus beneficial for parties involved in potential future IP conflicts. It is expected that a new regulation will be introduced to replace the provision and will be implemented as effectively as possible.

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### Mine Güner

Partner  
Kenaroglu Avukatlık Bürosu  
[mine@kenaroglu.av.tr](mailto:mine@kenaroglu.av.tr)

[View full biography](#)

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### Gözde Özen

Senior associate  
Kenaroglu Avukatlık Bürosu  
[ozen@kenaroglu.av.tr](mailto:ozen@kenaroglu.av.tr)

[View full biography](#)