

Constitutional Court Confirms the Finality of Settlement and the Bar on Challenges in Competition Investigation



In its decision dated 11 December 2025 and numbered E.2025/185, K.2025/258 (“**Decision**”), published in the Official Gazette dated 9 March 2026 and numbered 33191, the Constitutional Court held that Article 43/8 of the Law No. 4054 on the Protection of Competition (“**Law**”), which bars challenges against the administrative monetary fine and the matters covered by the settlement text where an investigation is concluded through settlement, is constitutional. The Decision confirms that settlement under Turkish competition law is a voluntary but final mechanism: once a settlement is reached, the agreed administrative monetary fine and the matters recorded in the settlement text cannot be challenged before the courts.

Background of the Decision

The constitutional review arose from an objection raised by the Ankara 9th Administrative Court in an annulment action against a decision rendered by the Competition Board (“**Board**”) within the framework of the settlement procedure. The referring court applied to the Constitutional Court on the basis that the rule to be applied in that case might be contrary to the Constitution.

The contested regulation is set out in the eighth paragraph of Article 43 of the Law and provides that, where an investigation is concluded through settlement, the parties may not challenge the administrative monetary fine or the matters covered by the settlement text before the courts.

In summary, the referring court argued that completely closing off judicial review against the administrative monetary fine and the matters covered by the settlement text disproportionately restricts the right of access to a court and the freedom to seek legal remedies, deprives the parties of the opportunity to have the scope of the allegation and the determination of the fine reviewed by judicial authorities, effectively eliminates judicial review over the acts and actions of the administration, and is therefore incompatible with the principle of the rule of law and Articles 2, 13, 36 and 125 of the Constitution.

The Constitutional Court's Assessment

1. Freedom to Seek Legal Remedies and the Right of Access to a Court

The Constitutional Court conducted its review within the framework of the freedom to seek legal remedies guaranteed under Article 36 of the Constitution and the regime of limitations set out in Article 13. In the Decision, it emphasized that the right of access to a court is not absolute and may be limited by law, provided that such limitation complies with the principles of legality, legitimate aim and proportionality. It also stated that, as a requirement of the principle of the rule of law, the limitation must be clear, precise and foreseeable.

The Constitutional Court determined that the settlement mechanism is regulated in detail in the Law; that undertakings against whom an investigation is initiated are informed about the nature and scope of the allegation; and that Articles 16 and 17 of the Law set out objective criteria for the calculation of administrative monetary fines.

Against this background, the Court found that the amount of the fine accepted in the settlement text cannot be regarded as entirely unforeseeable for the parties.

2. Legitimate Aim

The Constitutional Court considered that the regulation pursues the following legitimate aims:

- The swift and definitive conclusion of investigations concerning competition infringements,
- The effective use of public resources,
- The reduction of the workload of the judiciary

In this context, the Court stated that the settlement procedure is a mechanism that accelerates the process and reduces public costs both for the administration and the parties.

3. Proportionality Review

The Constitutional Court examined the principle of proportionality under the subheadings of suitability, necessity and proportionality in the strict sense. In terms of suitability, it accepted that the closure of judicial review serves the effectiveness of the settlement mechanism and contributes to the reduction of the judicial workload. In terms of necessity, it assessed whether the same result could be achieved through a less restrictive means and stated that the aim of settlement is to conclusively terminate the dispute and that keeping judicial review open would weaken that aim.

With regard to proportionality in the strict sense, the Court placed particular emphasis on the following considerations:

- Settlement is not mandatory; the parties may choose not to participate in the process.
- In the settlement process, the parties are granted a certain period and are informed about the scope of the violation.
- In the event of settlement, a reduction of up to 25% in the administrative monetary fine may be applied.
- The consequences of settlement are explicitly regulated in the Law.

When these elements were considered together, the Court concluded that parties opting for settlement waive their right to challenge the administrative monetary fine and the matters covered by the settlement text knowingly, expressly and voluntarily. The Court also stated that the Constitution does not contain any rule expressly prohibiting waiver of the right of access to a court, provided that such waiver is explicit and voluntary. It found that these conditions are satisfied under the settlement regime.

Conclusion

The Constitutional Court therefore unanimously held that the rule set out in Article 43 of the Law, which provides that, where an investigation is concluded through settlement, the administrative monetary fine and the matters covered by the settlement text cannot be challenged, is not contrary to Articles 13 and 36 of the Constitution.

The Court also considered that there was no need to conduct a separate examination under Articles 2 and 125 of the Constitution.

From a practical perspective, the Decision reinforces that settlement under Turkish competition law should be approached as an election between litigation and finality. Undertakings considering settlement should therefore assess both their potential fine exposure and the wording and scope of the settlement text before committing to the process.