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CONSTITUTIONAL COURT DECISION REGARDING THE MANDATORY MEDIATION CONDITION IN DISPUTES ON THE DISSOLUTION OF PARTNERSHIP

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In its decision (“**Decision**”) dated June 27, 2024, numbered 2023/178 M., 2024/125 D., published in the Official Gazette on October 2, 2024, and numbered 32680, the Constitutional Court rejected the annulment request concerning the constitutionality of the phrase “disputes related to the dissolution of partnership” in Article 18/B of the Law No. 6325 on Mediation in Civil Disputes (“**Law**”). The applicant argued that the mandatory mediation condition in disputes related to the dissolution of partnerships unjustifiably prolonged the process and violated the right to a fair trial. However, the Court ruled that this provision did not violate the Constitution and should remain in effect.

I. SUMMARY OF THE CONSTITUTIONAL COURT’S DECISION

The applicant, Sorgun Civil Court of Peace (“the **Court**”), argued that the phrase “*disputes related to the dissolution of partnership*” in the first paragraph of Article 18/B of the Law was unconstitutional and requested its annulment. The applicant claimed that ensuring the participation of all parties in such disputes poses significant difficulties, and that the institution of mediation lack the capacity to resolve these challenges. The objection highlighted that in cases of partnership dissolution, especially where movable or immovable properties are shared among multiple individuals, the large number of parties and the time required to gather their contact details would unnecessarily prolong the mediation process, thereby violating the right to access the courts. The applicant further asserted that resorting to mediation during this process introduces uncertainties in collecting party information and establishing parties, rendering mediation an ineffective means of resolution. Therefore, it was argued that mediation hinder, rather than accelerate the resolution process, violating the right to seek justice as guaranteed by Articles 2, 20, 35, and 36 of the Constitution.

The Constitutional Court acknowledged that the mandatory mediation requirement in disputes related to the dissolution of partnership could potentially restrict the right of access to courts, as guaranteed under Article 36 of the Constitution. However, it subjected this restriction to an analysis of whether this limitation was legitimate and proportional. After careful assessment, the Constitutional Court concluded that the mediation process did not impose an unnecessary burden on the parties and provided an effective solution aimed at expediting the judicial process. The Court emphasized the principle of suitability, noting that the mediation process is an effective method for resolving disputes more swiftly and at a lower cost. In particular, encouraging negotiations among the parties was deemed a measure to prevent unnecessary delays in cases involving the dissolution of partnerships. In this context, the Constitutional Court found that mediation provides an opportunity for parties to reach a settlement before resorting to litigation, aligning with the broader goal of reducing the judiciary's workload.

From the perspective of necessity principle, the Constitutional Court underlined the legislature’s broad authority to make mediation mandatory in resolving disputes and noted that no less burdensome alternative existed for resolving disputes related to the dissolution of partnerships. Especially in cases involving complex issues such as the distribution of property among numerous parties, mediation is considered to expedite the process and reduce costs.

Despite the potential challenges in establishing participation in the mediation process, the Constitutional Court explained that official records could be used to obtain parties’ information, and mechanisms are in place to conclude the process swiftly if certain parties did not participate. As a result, it was argued that the issue of establishing parties does not pose a significant obstacle to the process. Within the scope of the principle of proportionality, the Constitutional Court emphasized that the mediation process, limited to four weeks, does not disproportionately restrict the parties' freedom to seek legal remedies. It was noted that the process provides parties with an opportunity to reconcile, and if the parties do not participate or a settlement is not reached, the litigation process continues from where it left off. The Court concluded that mediation does not infringe on individuals' right to seek justice and serves the public interest.

II. CONCLUSION

The Constitutional Court dismissed the annulment request by a majority vote, stating that the mandatory mediation requirement in disputes related to the dissolution of partnerships does not restrict the right of access to courts but rather facilitates more efficient and faster judicial processes. In their dissenting opinions, Basri Bağcı and Selahaddin Menteş emphasized that in disputes concerning the dissolution of partnership, no decision is rendered regarding the acquisition of ownership. The primary purpose of these cases is eliminating joint ownership and distribute the rights concerning movable or immovable properties. Therefore, ensuring the participation of all parties is crucial in such cases. In cases where numerous parties are involved, particularly in cases involving inherited immovable properties, reaching all parties can be nearly impossible. Factors such as heirs living abroad, incorrect or incomplete addresses in records, and the inability to identify heirs of deceased individuals further complicate the process. In situations where courts cannot issue notifications to all parties, the mediator is expected to locate and include all parties in the process, which presents both practical and time-related challenges. Furthermore, when parties cannot be established, the mediator's ability to effectively communicate with the parties is also hindered. As a result, the mediation process is perceived as an unnecessary step that adds an additional burden to the judicial process.

Additionally, beyond the financial interests of the parties, emotional ties to immovable properties may complicate the resolution process in these cases. Emotional attachment to inherited properties could prevent parties from adopting rational solutions. Indeed, because of the sentimental value of immovable properties, it becomes even more difficult to reach a settlement among heirs, and the mediation process may prove to be an ineffective solution. Therefore, the mediation process, rather than solving the issue, may become a procedural hurdle that deepens the problem. For example, even if the material value of a property is low, the emotional and sentimental ties among heirs could lead to lengthy disputes, rendering the process unmanageable. Consequently, in these already complex cases, the mediation process may become a mere formality that creates a new obstacle for the parties, rather than resolving the dispute.

In conclusion, it is evident that the mediation process does not serve its intended purpose of leading parties to a swift resolution. On the contrary, the difficulty in establishing participation and reaching a settlement prolongs the process. Particularly in cases involving the division of immovable properties, mediation has been shown to be an ineffective solution and, in practice, imposes an additional burden on the existing judicial process. Therefore, in our opinion, it cannot be said that mediation in these cases serves a necessary or legitimate purpose in practice.

The full text of Constitutional Court's decision:
<https://www.resmigazete.gov.tr/eskiler/2024/10/20241002-4.pdf>

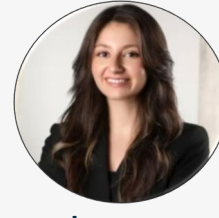
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