

The Turkish Constitutional Court Upholds the Non-Justiciability of Settlement Decisions under Competition Law

In its decision dated 11.12.2025 and numbered E. 2025/185, K. 2025/258, the Turkish Constitutional Court (“TCC”) dismissed the request to annul Article 43/8 of Act No. 4054 on the Protection of Competition (“APC”), which stipulates that, upon completion of the settlement process, neither the administrative fine nor the matters set out in the settlement text shall be subject to judicial review¹.

A. Background

Under Article 43/5 APC, the Competition Board (“Board”) may initiate the settlement procedure, either upon the request of the parties concerned or ex officio, at any point after the commencement of an investigation and before the notification of the investigation report. The Board may reach a settlement with undertakings or associations of undertakings that acknowledge the existence and scope of the infringement. The process concludes with a final decision containing the finding of infringement and the administrative fine. Article 43/8 APC provides that where a settlement is reached, the settling parties may not judicially challenge the administrative fine or the matters set out in the settlement text.

The exemption of settlement decisions from judicial review has been a subject of debate in practice. The main criticism in this respect is that undertakings opting for settlement in a given investigation may ultimately end up in a less favourable position than those that choose not to participate in the process.

The *Gübre*² decision offers a concrete example in this respect. In that case, İGSAŞ opted for the settlement procedure, acknowledged the infringement, and received an administrative fine. However, at the conclusion of the investigation, the Board did not find any

violation of Article 4 APC and, therefore, did not impose any fine on the remaining undertakings in the same investigation.

*The Borusan Lojistik*³ decision presents a similar concern. In determining the administrative fine, the Board applied a less favourable calculation method to the settling undertaking Borusan Lojistik than the one used for the non-settling undertakings in the same investigation. Borusan Lojistik challenged this decision before the Ankara 18th Administrative Court, which annulled it on the ground that applying different calculation methods to undertakings sanctioned for the same conduct may violate the principle of equality⁴. To comply with the annulment judgment, the Board adopted a new decision dated 06.02.2025 and numbered 25-04/111-63, in which it recalculated the administrative fine. The Ankara Regional Administrative Court, however, overturned the first instance court’s ruling, holding that the matters set out in the settlement text could not be judicially challenged under Article 43/8 APC⁵. Following this reversal, the Board withdrew its recalculation decision.

Those decisions have called into question the credibility and attractiveness of the settlement mechanism from the perspective of undertakings.

¹ Decision of the Constitutional Court dated 11.12.2025 and numbered E. 2025/185, K. 2025/258.

² Decision of the Competition Board dated 03.08.2023 and numbered 23-36/670-226.

³ Decision of the Competition Board dated 03.08.2023 and numbered 23-36/670-226.

⁴ Decision of the Ankara 18th Administrative Court dated 08.11.2024 and numbered E. 2023/2444, K. 2024/1846.

⁵ Decision of the 8th Administrative Litigation Chamber of the Ankara Regional Administrative Court dated 07.05.2025 and numbered E. 2025/228, K. 2025/604.

B. The TCC's Constitutional Review of Article 43/8 APC

In a case seeking the annulment of a Board decision rendered at the conclusion of a settlement process, the Ankara 9th Administrative Court held that Article 43/8 - which exempts settlement decisions from judicial review- may be unconstitutional, and referred the question to the TCC for a concrete review of constitutionality. The TCC, however, dismissed the application on the merits.

In its referral, the Administrative Court argued that Article 43/8 APC violates Articles 2 (rule of law), 13 (restrictions on fundamental rights and freedoms), 36 (right of access to court), and 125 (judicial review of administrative acts) of the Constitution.

The TCC assessed the challenged provision as a restriction on the right of access to court guaranteed under Article 36 of the Constitution. It applied the framework set out in Article 13, which requires that any restriction of fundamental rights and freedoms satisfy the criteria of legality, legitimate objective, and proportionality.

On legality, the TCC found that the amount of the administrative fine was not entirely unforeseeable, given the notifications communicated to the parties concerned at the outset of the investigation and the fine limits set forth in Articles 16 and 17 APC. The matters to be included in the settlement text were likewise foreseeable in light of the nature of the investigation process. The TCC accordingly concluded that the provision satisfied the legality requirement.

On legitimate objective, the TCC determined that the provision serves to reduce the public costs of investigating competition infringements, ensure the swift and definitive conclusion of proceedings, and alleviate the

judicial workload. It therefore found that the provision pursues a legitimate objective.

As to proportionality, the TCC held that the provision is suitable for achieving its objective and that no less restrictive means could attain the same legitimate objective. Taking into account the voluntary nature of the settlement, the parties' ability to decline participation, and the availability of a reduction of up to twenty-five percent in the administrative fine, the TCC concluded that the provision does not impose an excessive burden on individuals and is proportionate.

The TCC further observed that Article 36 of the Constitution does not expressly prohibit waiver of the right of access to court. Such waiver is permissible, the TCC noted, provided that it is explicit, its consequences are foreseeable, and the minimum guarantees of the right to a fair trial are maintained.

The TCC ultimately ruled that the provision does not violate Articles 13 and 36 of the Constitution. It held that a separate examination under Articles 2 and 125 was unnecessary, as the arguments raised in relation to those provisions had already been addressed in the foregoing analysis.

C. Conclusion

While the inability to challenge settlement decisions may produce inequitable outcomes, as illustrated in the *Gübre* and *Borusan Lojistik* decisions, the TCC's ruling has largely foreclosed the possibility of contesting such decisions on this ground. Undertakings should therefore be acutely aware, before opting for settlement in an antitrust investigation, that they will forgo the opportunity to challenge the administrative fine and all other matters set out in the settlement text.

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