

## The Turkish Constitutional Court Dismisses the Request for Annulment of the Competition Authority's On-Site Inspection Powers.

With its decision dated 06.11.2025 and numbered E. 2023/174, K. 2025/224, the Turkish Constitutional Court (“TCC”) rejected the request for the annulment of the provisions concerning the on-site inspection powers of the Turkish Competition Authority (“Authority”), set forth under Article 15 of Act No. 4054 on the Protection of Competition (“APC”)<sup>1</sup>.

### A. Background

The constitutionality of the on-site inspection power granted to the Authority under Article 15 APC has long been a subject of debate in both doctrine and practice. These discussions mainly focus on whether the Authority's power to conduct inspections at the business premises and digital environments of undertakings without a judicial warrant violates the rights to the inviolability of the domicile and to privacy, and on the legality of the evidence obtained through such inspections.

The Authority's power to conduct warrantless on-site inspections was challenged before the TCC through an individual application by Ford Otomotiv Sanayi A.Ş. The TCC emphasized that interference with the inviolability of the domicile is only permissible if based on a judicial warrant, and concluded that on-site inspections conducted at the undertaking's premises under Article 15 without such a warrant violated the right to the inviolability of the domicile<sup>2</sup>.

Following *Ford* decision, many undertakings, in their defences before the Authority, argued that inspections conducted without a judicial warrant were unlawful and that evidence obtained through such means could not serve as a basis for imposing a fine. However, the Board consistently rejected these arguments, stating that although the TCC found a violation of the inviolability of domicile in *Ford* decision, it did

not rule on the inadmissibility of the documents collected during the on-site inspection as evidence and further noted that Article 15 remained in force<sup>3</sup>.

In its most recent decision dated 06.11.2025, the TCC examined the alleged unconstitutionality of Article 15 APC through an application for a concrete review of constitutionality; however, it departed from its *Ford* precedent and dismissed the application by a majority vote.

### B. Scope of the Application for Concrete Review of Constitutionality

In the objection filed by the 13th Chamber of the Turkish Council of State (*Danıştay*) and the Ankara 11th Administrative Court, it was alleged that Article 15 APC violates the regime for the restriction of fundamental rights and freedoms under Article 13 and the right to the inviolability of the domicile under Article 21 of the Constitution.

The application sought the annulment of two specific regulations in Article 15:

- (i) the phrase “...in cases it deems necessary...” in the first sentence of the first paragraph, and
- (ii) the second sentence of the third paragraph, which stipulates obtaining a decision from a court if an on-site inspection is obstructed.

<sup>1</sup> Decision of the Constitutional Court dated 06.11.2025 and numbered E. 2023/174, K. 2025/224. <https://www.resmigazete.gov.tr/eskiler/2026/02/20260217-7.pdf>. (Date of Access: 17.02.2026)

<sup>2</sup> Individual application decision of the Constitutional Court dated 23.03.2023 and numbered 2019/40991. <https://www.resmigazete.gov.tr/eskiler/2023/06/20230620-5.pdf>. (Date of Access: 17.02.2026)

<sup>3</sup> Decision of the Competition Board dated 09.05.2025 and numbered 25-18/433-202. <https://www.rekabet.gov.tr/Karar?kararId=774fd1f8-24dc-47ff-81a4-1bc478667a13>. (Date of Access: 17.02.2026); Decision of the Competition Board dated 11.09.2025 and numbered 25-37/880-518. <https://www.rekabet.gov.tr/Karar?kararId=3da58d18-d8ba-4fd0-8606-0dbb7aac08c7>. (Date of Access: 17.02.2026)

The TCC rejected the annulment requests, ruling on the merits for the first request, on procedural grounds for the second.

## C. Assessment of the Decision

### a. Review of the Requirement to Obtain a Judicial Warrant in Case of Obstruction

The TCC dismissed the request for the annulment of the provision in Article 15/3, which requires a judicial warrant in the event of obstruction of on-site inspections, from a procedural perspective, holding that it was not an “applicable rule” that would directly affect the outcome of the case.

The TCC appears to have applied the requirement that a rule must be “applicable in a pending case”, as set out under Article 40 of Act No. 6216 very strictly. According to the TCC’s case law, this expression covers all types of norms that may have a positive or negative impact on the resolution of issues arising at various stages of litigation or on the final judgment<sup>4</sup>. The dissenting members considered it inappropriate to exclude the norm, which determines the procedure the Authority must follow in cases of obstruction, from judicial review.

### b. Merits Review of the Phrase “...in cases it deems necessary...”

The TCC evaluated the phrase “...in cases it deems necessary...” stipulated in Article 15/1 APC with respect to Article 167 of the Constitution, which imposes a duty on the state to ensure the sound and orderly functioning of markets and to prevent monopolization. Based on this provision, the Court concluded that the on-site inspection power granted to the Authority is a requirement of this positive obligation and, therefore, is constitutional. The Court further stated that the provision has no direct relevance to Article 13 (the regime for the

restriction of fundamental rights and freedoms) and Article 21 (inviolability of the domicile) of the Constitution, and therefore did not conduct an examination with respect to these articles.

This approach of the TCC seems to contradict its judgement in *Ford* decision. While in *Ford* decision, the TCC evaluated the on-site inspection power with respect to the right to the inviolability of the domicile and found a violation, it concluded in its concrete norm review that the same provision was irrelevant to these articles.

One of the dissenting opinions states that the grounds for the violation identified in the individual application remain equally valid in the context of the concrete norm review. It further emphasized that although high courts may change their precedents, such a radical departure regarding a fundamental right must be supported by highly persuasive justifications, in accordance with the principles of legal stability and predictability; however, the current decision lacks such justification.

Other dissenting opinions also argued that non-public offices and workspaces belonging to undertakings constitute a “domicile” pursuant to Article 21 of the Constitution, and accordingly, no inspection can be conducted therein without a judicial warrant or in cases where delay would be prejudicial, without a written order from the authorized body.

## D. Conclusion

Following *Ford* decision, there had been an expectation in practice that the TCC, through a concrete norm review, would annul Article 15 APC, which grants the Authority the power to conduct on-site inspections without a judicial warrant. However, the TCC’s decision to dismiss the annulment request has defied these expectations.

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<sup>4</sup> Decision of the Constitutional Court dated 10.04.2019 and numbered E. 2018/136, K. 2019/21. <https://normkararlarbilgibankasi.anayasa.gov.tr/Dosyalar/Kararlar/KararPDF/2019-21-nrm.pdf> (Date of Access: 17.02.2026)

The TCC's reasoning for the dismissal does not provide a comprehensive legal analysis that addresses the objections raised against the on-site inspection power. The fact that the decision considers the issue solely in the context of Article 167 and excludes Article 21 concerning the inviolability of the domicile and Article 13 governing the restriction of fundamental rights, unlike *Ford* decision, may be seen as a significant shortcoming in terms of the depth of constitutional review. Indeed, the dissenting opinions criticized this narrow approach and highlighted the risks of leaving the on-site

inspection procedure without constitutional guarantees.

In conclusion, it is difficult to assert that this decision resolves the ongoing debates regarding the constitutionality of the Authority's on-site inspections. It would be not surprising that the constitutionality of Article 15 APC returns to the TCC's agenda in the future through new concrete norm review applications, relying, among others, on Article 20 of the Constitution regarding the right to privacy.

**For more information and assistance, please feel free to contact us.**



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