

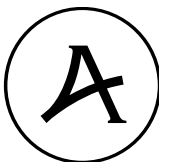
CONSTITUTIONAL COURT DECISION ON THE AUTHORIZATION OF THE COMPETITION AUTHORITY TO CONDUCT ON-SITE INSPECTIONS

As a result of the decision of the Constitutional Court (the "CC") on the individual application, published in the Official Gazette on 20 June 2023 under application number 2019/40991 (the "**Decision**"), the Competition Authority (the "**Authority**") examined whether the Applicant's right to inviolability of home had been violated. The decision concluded that the applicant's right to inviolability of home had been violated in the case in question, since the decision to carry out an on-site inspection was not authorized by a judge. The Decision may serve as a precedent for existing disputes as well as future on-site inspections by the Authority.

In this instance, the competition experts authorised to carry out a on-site inspection went to the applicant's address and carried out an on-site inspection, as a result of which they received 78 sheets of documents consisting of electronic mails obtained from the computer of the company's employees. Thereupon, the applicant submitted that, in accordance with Article 21 of the Constitution, the right to inviolability of the home could be infringed only by a judicial decision and that the on-site inspection carried out by the authorities at the applicant's workplace did not contain sufficient legal guarantees and that his right to inviolability of the home had been infringed.

In the relevant decision, the Constitutional Court firstly stated that the concept of home is generally defined as the place where private and family life develops in line with the decisions of the European Court of Human Rights ("**ECHR**") and the Court of Cassation; however, the Constitutional Court underlined that the concept of home may also include workplaces. Within this framework, the Decision states that the office where a person carries out his/her profession or the headquarters for companies, branches and other workplaces of legal entities can also be considered within this scope.

As defined by the Constitutional Court, a search is a protection measure that restricts certain fundamental rights of individuals as a means to obtain evidence and/or apprehend the accused or suspect before or after the crime is committed to prevent decriminalization. The decision must be made by a judge, as it restricts fundamental rights of individuals.



The on-site inspection regulated under Article 15 of the Law No. 4054 on Protection of Competition ("**Law No. 4054**") refers to the Competition Authority officials conducting an examination at the premises of undertakings or associations of undertakings. The decision clearly states that areas where the company's management activities are carried out, as well as areas that are not freely accessible to everyone, such as workrooms, are considered to be the home.

The second sentence of the first paragraph of Article 21 of the Constitution explicitly states that no one's home can be entered, no search can be conducted in their home, and no possessions therein can be seized without a judicial decision given in accordance with the procedure. In the same paragraph, it is stated that the written order of the authorities authorized by law may be deemed sufficient, provided that it is submitted to the approval of the judge in charge within 24 hours, limited to cases of delay. Furthermore, with respect to seizure, the obligation to announce the decision of seizure to the judge within 48 hours is imposed, otherwise the seizure will automatically cease.

Article 15 of Law No. 4054 states that on-site inspections may be carried out upon the Authority's decision, and it has been observed that this is not limited to cases where the delay is inconvenient. Although Article 21 of the Constitution states that, in cases of delay, the written order of the authority empowered by law may be considered sufficient instead of a direct decision by a judge, it cannot be said that this power granted to the Authority conforms with Article 21 of the Constitution. Even if the contrary is accepted, the fact that the Authority is not obliged to submit its on-site inspection decision to the approval of a judge within 24 hours would also constitute a violation of the Constitution.

Due to all these issues, it has been concluded that the interference with the applicant's right to inviolability of the home is contrary to the second sentence of the first paragraph of Article 21 of the Constitution and that the right to inviolability of the home has been violated. It is unclear how this judgement, in which the Constitutional Court decided that conducting on-site inspections without the required judge warrant constitutes a violation of rights, will play out in reality. With this Decision, which for now only has consequences for the applicant, the relevant matter has been notified to the Grand National Assembly of Turkey.

