14.10.2003, E.2003/36, K.2003/91

Date	**:**	14.10.2003
Number	**:**	E.2003/36, K.2003/91
Official Gazette	**:**	14.04.2005, 25786
Subject	**:**	Litigation in respect of the formal validity of enactments,Limits of the legislative competence, Vested and/or acquired rights, General interest, Powers, Relations with the executive bodies, Composition, Remuneration, Eguality, Ministry, staff, working abroad / Salary, amount / Ministry, organisation, power.

Headnotes:

The competence of the Constitutional Court on the verification of laws as to form is limited to whether the requisite majority was obtained in the last ballot as a whole or not.

The creation of new ministries and merging existing ones into one ministry is within the discretion power of the National Assembly. Public interest, the fundamental aims and duties of the State mentioned in Article 5 of the Constitution and other Constitutional principles should be taken into account when using that competence. The constitutional review of the laws creating new ministries or merging existing ones, do not cover this question of whether a law is appropriate or not from a political point of view.

Summary:

A group of deputies applied to the Constitutional Court seeking the annulment of Law on the Organisation and Duties of the Ministry on Culture and Tourism (hereinafter Law 4848 of 16 April 2003).

The deputies alleged that Law 4848 was not voted in the way required by the Constitution. Since the draft bill was not negotiated and voted article by article before the last ballot in the Parliament, the requirements of the last ballot as explained in Article 148 of the Constitution were not met.

The deputies further alleged that there was no public interest in merging two ministries into one.

Article 148.2 of the Constitution states that "the verification of laws as to form shall be restricted to consideration of whether the requisite majority was obtained in the last ballot". Since formal review is limited to whether the requisite majority was obtained in the last ballot, the terms "last ballot" and "requisite majority" have to be clarified. When Articles 88 and 148 of the Constitution and their statement of reasons are taken into account, it is clear that the deficiencies in the present case

emerged before the last ballot (as the procedures at the commissions and the debates on articles in the general assembly) may not be regarded as a reason to annul the laws. The competence of the Constitutional Court on that issue is limited to whether the last ballot related to the law as a whole is made in accordance with the quorum for convention and decisions or not. Under the provisions of Article 96 of the Constitution, there must be at least 184 deputies for convention. The quorum for decisions is the absolute majority of the deputies present in the Assembly. However, that number may not be less than 139 in any circumstances.

The last ballot of Law 4848 has been carried out via open electronic vote at the Turkish Grand National Assembly. In the ballot, 279 deputies have voted, 224 deputies voted in favour of the draft law and the rest, 55 deputies, voted against. Thus, it is understood that the last ballot has been realised in accordance with a majority required by the Constitution. Therefore, the demand related to the formal review was rejected.

As to the material review of constitutionality, the term "public interest", on which the deputies mainly based their submissions, is not defined in the Constitution and there is no consensus on its definition in the doctrine. It is therefore necessary to determine its meaning on a case by case basis. Laws are enacted in order to realise public interest. Their aim must be to satisfy interests directed to the society in general, and not specific interests of private individuals or a group of individuals. In the general statement of the reasons of the Law 4848, it is explained that the Turkish public administration was expanded so much that this expansion has caused inefficiency and extravagance, the bureaucratic mechanism has decreased the effectiveness and quality of pubic activities and this has given rise to the slowing down of the public services. Moreover, in the general statement of reasons, it is explained that the Ministry of Culture and the Ministry of Tourism have been merged under the name of "the Ministry of Culture and Tourism" in order to overcome those problems and also to reduce the organisational structure of the ministries, as well as to reduce the number of staff, to save in the personnel, in the office stock and in similar expenditures. Moreover, the departments within the ministries having similar or same duties have been organised under one department and the foreign administration of the Ministry of Culture has been closed down. These measures were all taken to ensure the efficiency of public expenditure.

In Article 113 of the Constitution, it is stated that "The formation, abolition, functions, powers and organisation of the ministries shall be regulated by law", but the number of ministries is not fixed and their titles have not been provided for in the Constitution.

The Constitution gives to the legislative power the competence to create new ministries, to abolish, merge or divide existing ones. When using this competence, the legislative has to maintain the public interest and respect the rules mentioned

in Article 5 of the Constitution as well as other constitutional principles related to the fundamental aims and duties of the State.

Since it has not been ascertained that the contested law was contrary to the fundamental aims and duties of the State and public interest, the particular contested provisions are conform to Articles 2 and 5 of the Constitution. On the other hand, it is out of constitutional review whether they are appropriate or not from a political point of view. Therefore, the application has been rejected.

The provisional Article 2 of the Law 4848 provided that staff working abroad would be reappointed in Turkey to a position equivalent to their status at home and would receive as a salary an amount equal to the salary they earned before being reappointed until their new position would offer them an equal salary to the one they earned abroad (due to inflation). The deputies appealed to the Constitutional Court alleging that this provision violates the acquired rights of the staff since the salaries of the staff abroad are substantially higher than the salaries at home. Moreover, they claimed that there would be inequalities between the staff who come from abroad and the staff originally working at home since the staff coming from abroad would receive their original salaries for a certain period of time at home.

The Constitutional Court recalled that the principle of equality does not mean that all individuals are bound by the same rule. The differences between the status and positions may necessitate the application of different legal rules to individuals having a different legal status. The staff working abroad for the Ministry of Culture and for the Ministry of Tourism is subject to different rules as concerns financial rights and employment methods. There are specific rules in the Laws 189 and 657 for staff working abroad regarding their salaries. Within the framework of the mentioned provisions, the salaries of the permanent staff working abroad were determined under different rules than the staff working at home. When the staff working abroad starts to work at home, there shall be differences between their salaries and the salaries of the staff working at home. Since the staff working abroad had special provisions from the point of financial rights and from the point of the duties they perform, they may not be compared with the staff working at home. Therefore, applying different rules for those staff does not violate the principle of equality as mentioned in Article 10 of the Constitution.

On the other hand, the Law 4848 has abolished some positions abroad within the Ministry of Culture and the Ministry of Tourism. In order to evaluate acquired rights of the individuals, there must be rights which have become definitive and obtained. The deputies do not mention those kind of rights of the staff, but mention instead the potential rights. Since, the expected rights may not be accepted as acquired rights, the Constitutional Court did not find provisional Article 2 contrary to the Constitution.

On the other hand, provisional Article 4 of the Law 4848 provided that the existing provincial organisations of the Ministries of Culture and Tourism shall both function until the reorganisation of the new ministry, i.e. the Ministry of Culture and Tourism, and it attributed to the Council of Ministers the competence to organise the provincial administration of the Ministry of Culture and Tourism.

Since the Council of Ministers has to take into account the legal provisions (Decree Having Force of Law on General Staff and Procedures (190), the provisions of Law 4848, the Law on State Officials (657) concerning organisation of the new ministry, provisional Article 4 is not contrary to Articles 7 and128 of the Constitution. Therefore, the request was rejected