

30.09.2005, E.2005/78, K. 2005/59

Date : 30.09.2005
Number : E.2005/78, K.2005/59
Official Gazette : 23.03.2006, 26117
Subject : Electoral disputes, Non-retrospective effect of law, Right to stand for election, Election, professional body, ineligibility / Professional association, election.

Headnotes:

The stipulation that presidents of Professional Organisations of Craftsmen and Tradesmen may not be elected for more than two terms was ruled unconstitutional. The law must not have a retroactive effect. The new rules governing the elections of presidents of Professional Organisations should not be applied to existing presidents. The second sentence of Article 54/1 of Law no. 5362 does not guarantee legal protection for these organisations and is accordingly at variance with the Constitution.

Summary:

Several members of parliament petitioned the Constitutional Court regarding the repeal of the second sentence of Article 54/1 of the Law no. 5362, which governs the Professional Organisations of Craftsmen and Tradesmen. This sentence provided that presidents of organisations of craftsmen and tradesmen who have served for two consecutive terms as President may not be re-elected until one election term has passed.

The members of parliament argued that the rules concerning the election of presidents of the Union of Chambers and Commodity Exchanges and the Union of Agricultural Chambers differ from those pertaining to the Professional Organisations of Craftsmen and Tradesmen. The organisations are similar, and so the election procedures should be the same.

Article 135.1 of the Constitution states that public professional organisations and their higher echelons are public corporate bodies established by law. Their officials are to be elected by secret ballot under judicial supervision by their members in accordance with the procedure set out in the law. It is clear from this constitutional principle that the process of election of presidents of professional organisations and their higher echelons must be regulated by law, as must their qualifications.

The principle of the rule of law is enshrined within Article 2 of the Constitution. A State governed by this principle is one which respects and upholds human rights and freedoms. Its activities must be open to judicial review. Parliament must be aware that there are fundamental principles governing the laws, which have to be respected. Legislation must contain provisions to govern situations which may arise in the future, in order to maintain stability and confidence in the law. As a rule, laws cannot be retroactively applied, except with a view to ensuring equity and to the protection of fundamental rights.

The provision under scrutiny affects current presidents of professional organisations, in that those who have served two consecutive terms as president may not be re-elected until an election term has passed. It is accordingly at variance with the principle of the rule of law.

The Court held that the provision contravened Articles 2 and 11 of the Constitution and ordered its repeal. Justices Mrs F. Kantarcioglu, Mr M. Erten, Mr S. Apalak and Mr S. Kaleli put forward dissenting opinions.