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Headnotes:

Where, in the absence of a prohibitive constitutional rule, the legislative power regulates a subject on the basis of its general power to legislate, it does not mean that the legislative power is using a power that does not emanate from the Constitution. The requirement of the joint signatures of the Prime Minister and the minister concerned as well as the Deputy Prime Minister on decrees is therefore not unconstitutional, even though no provision deals with the matter in the Constitution. This requirement does not revoke the responsibilities of the Prime Minister and the minister concerned, which derive from the Constitution.

Summary:

The main opposition party (at the material time, the Motherland Party) brought an action in the Constitutional Court seeking the annulment of Supplementary Article 1 of the Law 2451. The Law 2451 regulates the procedure for appointments to the ministries. Supplementary Article 1 states that where the Council of Ministers (the Cabinet) is made up of ministers coming from more than one political party, the requirement of a joint signature under that Law means the signature of the Prime Minister and the Deputy Prime Minister whose party has the most deputies in the Parliament.

Moreover, this rule is applicable to the appointments under other laws requiring the signature of the Prime Minister.

In Turkey, in the event that the Council of Ministers is made up of ministers coming from more than one political party, the presidents of the political parties other than the Prime Minister's party become deputy prime ministers. Where the Council of Ministers is made up of two political parties, the appointments to the ministries are signed by the Prime Minister and the president of the other political party. Where there are more than two political parties in power other than that of the Prime Minister, the president of the party having the most deputies in the Parliament is the Deputy Prime Minister responsible for signing the appointments.

The last paragraph of Article 6 of the Constitution provides: "...[t]he right to exercise sovereignty shall not be delegated to any individual, group or class. No person or agency shall exercise any State authority which does not emanate from the Constitution", and Article 8 states: "...[e]xecutive power and function shall be exercised and carried out by the President of the Republic and the Council of Ministers in conformity with the Constitution and the laws". The executive power is made up of two structures. On the one hand, the Council of Ministers executes the Government programme, and it has a political nature. On the other hand, the administration carries out administrative matters and activities, and it has a technical nature.

The appointment of deputy prime ministers, with the tasks of ensuring co-ordination within the Council of Ministers and assisting the Prime Minister, had been regulated for the first time by the Law 4951 in 1946. Article 4 of the Law 3046 (amended by the Law 4060 in 1994) envisaged that two ministers, at most, could act as deputy prime ministers.

Article 113 of the Constitution, which regulates ministers and the formation of ministries, contains no rule concerning a "deputy prime ministry" or its responsibilities. Where there is no rule in the Constitution on a subject, it falls to the legislative power to regulate that subject within the framework of the Constitutional principles. The legislative body set up the office of deputy prime minister on the basis of its existence in some countries governed by the parliamentary system. The Deputy Prime Minister is one of the members of the Council of Ministers.

Consequently, the Constitutional Court found that the impugned provision was not contrary to Article 6 of the Constitution.

Article 105 of the Constitution states: "[a]ll Presidential decrees except those which the President of the Republic is empowered to enact by himself without the signatures of the Prime Minister and the minister concerned, in accordance with the provisions of the Constitution and other laws, shall be signed by the Prime Minister, and the ministers concerned. The Prime Minister and the ministers concerned shall be accountable for these decrees". It is thus emphasised that the responsibility of the executive power, made up by the Council of Ministers and the President, belongs to the Prime Minister and to the ministers. The purpose of that provision is to set out the responsibilities of the Prime Minister and ministers. In this article, there is a prohibition on decrees being signed by a minister other than the Prime Minister and the minister concerned. The impugned rule does not revoke the competence and the responsibility of the Prime Minister and the minister concerned.

Where there is no prohibiting or ordering rule in the Constitution on a subject, a discretionary power is given to the Parliament. Therefore, the Constitutional Court

found that for the reason that it promoted the smooth functioning of coalition governments, the rule requiring the joint signature of the Deputy Prime Minister as well as the Prime Minister and the minister concerned for presidential decrees was not contrary to Article 105 of the Constitution.

Article 112 of the Constitution regulates the Functions and Political Responsibilities of the Council of Ministers. According to that Article, the Prime Minister "shall ensure co-operation among the ministers, and supervise the implementation of the government's general policy".

When the competence set out in Article 112 of the Constitution is taken into account, it is doubtless that the Prime Minister is placed in a position superior to that of the ministers from the legal and political point of view. The office of Deputy Prime Minister is not dealt with in the Constitution. The Court noted that office of Deputy Prime Minister had arisen out of the needs of the country, as in the case in other countries with a parliamentary system, and had been created in order to assist the Prime Minister.

Where competences are given to a minister who is also a member of the Council of Ministers and to the Deputy Prime Minister over some appointments, transfers and dismissals of high ranking public officials, it does not preclude the existence of the Prime Minister's competence over ministers. Consequently, the Constitutional Court found that the impugned rule was not contrary to the Constitution and that the objection had to be rejected.