

30.04.1998, E.1997/26, K.1998/10

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Headnotes:

The determination of a time-limit for public prosecution, trial and punishment falls within the appreciation (discretion) of the legislative power provided that it acts within the boundaries of the Constitution, taking into account the seriousness of crimes, their effects on public order and criminal law policies.

Summary:

In dealing with a case on theft, the Nevsehir Court of First Instance applied to the Constitutional Court for the striking down of the clause "more than five years of imprisonment" in Article 102.3 of the Criminal Code.

According to Article 102 of the Criminal Code, public prosecution is discontinued if ten years have elapsed since the crime was committed where a crime is punishable by more than five years and less than twenty years of imprisonment.

Article 493 of the Criminal Code, which is to be applied by the Court of First Instance, provides for imprisonment from three years to eight years. (Under the case-law of the Court of Cassation, prescription of public prosecution is determined on the basis of the maximum period of imprisonment in the Articles.) In this case, the time-limit for public prosecution and trial is ten years. According to another rule of the Criminal Code, Article 112.1, the time-limit for punishment in this case is also ten years.

The applicant Court submitted that the time-limit for punishment should be much shorter than that for conducting prosecution and trial, whereas in this case they are equal.

Article 10 of the Constitution states that "all individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings". Equality before law does not mean that everybody shall be bound by the same rules. It is a natural consequence of the

equality rule that individuals having the same legal status shall be bound by the same rules, while individuals having different legal status shall be bound by different rules.

According to Article 2 of the Constitution "The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk; and, based on the fundamental tenets set forth in the Preamble". The rule of law means that the State shall respect human rights, shall protect those rights, shall establish a legal order on the basis of equity and equality, and its acts and actions shall be subject to judicial review.

The challenged provision does not privilege any individual and it is applicable to persons having committed a crime punishable by more than five years of imprisonment. As a result, there is no discrimination.

In every legal regulation for determining time-limits, different consequences arise from small changes to the periods of time to be applied.

The same time-limits for public prosecution, trial and punishment arise from the length of imprisonment in Article 493 of the Criminal Code and the case-law of the Court of Cassation.

On the other hand, since the lapse of time for public prosecution, trial and punishment serve different legal purposes, public prosecution, trial and punishment should not be taken as a basis of comparison for the time-limits.

Therefore, the application was unanimously rejected.

Supplementary information:

Case no. E.1997/26, K.1998/10.