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Headnotes:

In view of the state's obligation to ensure the protection of family life and more particularly, the special protection of the civil law marriage system provided for in the Constitution, a penalty of imprisonment for the holding of a religious wedding before the official (civil law) wedding ceremony is not unconstitutional.

Summary:

The Orhangazi Magistrates' Court referred to the Constitutional Court the question whether Article 237.4 of the Turkish Criminal Code was incompatible with the Constitution. According to this provision, "if any man or woman holds a religious wedding ceremony prior to the conclusion of the civil marriage, he or she shall be liable to between two and six months' imprisonment".

In accordance with the principle of equality, similar offences must be sanctioned with similar penalties under the criminal law. The penalties imposed for offences committed must be balanced, in line with the existing social structure and the effect within society of such penalties. However, parliament is bound to respect the Constitution and universal principles of law when legislating with respect to the penalties that may be imposed for a given offence.

Cohabitants may not be considered as having the same legal status as persons who have concluded a religious marriage with the intention of being married to each other. Thus, the rule in question, which treats people who have been married in a religious ceremony differently from cohabitants, is not contrary to the principle of equality enshrined in the Constitution.

Parliament has the discretionary power to determine which acts are deemed to be offences and what penalties shall be applied to these offences, provided that it acts within the limits of the Constitution and the general principles of the criminal law. In Turkey, the Civil Code formed one of the most important bodies of law in the passage to a contemporary, secular legal system. Under Article 174 of the Constitution, the system of civil law marriage is subject to special protection. Furthermore, Article 41 of the Constitution lays down provisions related to the protection of family life. Bearing these points in mind when examining the

responsibility of the state, it can be seen that, in order to eliminate the negative effects of religious marriages in practice, it is not unconstitutional to impose penalties on persons arranging a religious wedding before the official marriage has been concluded.

Since the law does not prohibit the religious marriage from being concluded after the official marriage, the prohibition on holding a religious wedding before the official ceremony is not contrary to the Constitution. Thus Article 237.4 of the Criminal Code was found to be compatible with the Constitution.

Supplementary information:

In Turkey, two kinds of wedding ceremony are generally performed. First, there is an official wedding before the mayor or his or her authorised official. This is registered and the marriage is officially recognised. Second, there is a religious wedding ceremony before an imam or another person. The religious wedding is unofficial and religious marriage has no official force under the law.