

## **19.07.2001, E.2001/3, K.2001/3**

**Date** : 19.07.2001  
**Number** : E.2001/3, K.2001/3  
**Official Gazette** : 31.08.2002, 24862  
**Subject** : Dissenting opinions, Criminal law /Political party, membership,conditions / Political party,member, sentenced / Sentence,execution / Sentence, suspension,effect.

### Headnotes:

If a person had served his or her sentence prior to the adoption of a new law that has suspended the execution and investigation of that kind of sentence, the effects of the served sentence cease to have effect.

### Summary:

The Chief Public Prosecutor of the Republic sought an order from the Constitutional Court that the Renaissance Party be given an official warning, since Hasan Celal Güzel, a member of the Renaissance Party, had not been expelled from the Party in spite of his having been sentenced under Article 312.2 of the Turkish Criminal Code.

According to Article 11.b.5 of the Law on Political Parties (no. 2820), a person sentenced under Article 312.2 of the Turkish Criminal Code may not be admitted as a member of a political party. Hasan Celal Güzel, a member of the Renaissance Party, was sentenced to imprisonment under Article 312.2 of the Criminal Code and was released on 16 December 2000.

Law no. 4616, which came into force on 21 December 2002, suspended the execution of certain sentences provided that those sentences were imposed for acts committed in the form of expressions disseminated through means such as meetings, congresses, conferences, symposiums, open discussions and panels including means of mass communication. The acts for which Hasan Celal Güzel was sentenced are included amongst those for which sentences were suspended. Moreover, according to Article 2 of Law no. 4454 (another law on the suspension of sentences), if a sentence is suspended and 3 years have passed without being convicted, the first conviction shall be deemed not to have been imposed. Under Law no. 4616, there is no provision that the subsidiary penalties shall not also be suspended. Thus, the subsidiary penalties deriving from the main sentence should also be suspended. If the conditions mentioned in Law no. 4454 exist, "the sentence [including the subsidiary penalties] shall be deemed not to have been imposed".

For these reasons, that is taking into account the aim of suspended sentences, the indivisibility of such suspensions and the effects of the secondary sentences, Hasan Celal Güzel should be entitled to the benefit of the provisions of Laws nos. 4454 and 4616. Since there was therefore no obstacle to his remaining a member of the party, the request of the Chief Public Prosecutor was dismissed.

Dissenting opinions were handed down by Fulya Kantarcioglu, Ertugrul Ersoy, Tülay Tugcu and Ahmet Akyaçin.