

27.10.2001, E.2001/4, K.2001/332

Date : 27.10.2001
Number : E.2001/4, K.2001/332
Official Gazette : 27.10.2001, 24566
Subject : Powers, Detainees, Criteria of distinction, Imprisonment period, decrease / Judicial proceedings, suspension / Prisoner, benefits.

Headnotes:

Parliament has discretionary power to decide to which misdemeanours and felonies shall apply the Law on Conditional Release and Postponement of Actions and Penalties. It also has discretionary power regarding the name and application date of the law.

A differentiation between individuals having a different status and under different conditions conforms to the equality principle guaranteed by the Constitution when established for just reasons.

Summary:

Law 4616 (the Law on Conditional Release and Suspension of Sentences Stemming from Misdemeanours and Felonies committed before 23 April 1999) included some provisions in favour of offenders, detainees and prisoners.

While trying cases, some courts considered that some provisions of the law were contrary to the Constitution and applied to the Constitutional Court to annul these provisions. The number of applications of this kind reached 220.

The general provisions of the law may be summarised as follows:

With reference to misdemeanours and felonies committed before 23 April 1999:

the death penalty shall not be executed but shall be commuted to life imprisonment;

a 10 year reduction shall be applied to life imprisonment and penalties restricting liberty;

after an application of reduction, if there is no time to be spent in prison, prisoners shall be released and if there is time to be spent in prison, after execution of the penalty, they shall be released also;

the detainees at the time of promulgation of the law shall be released after examination of their status;

inquiries and trials at the time of the promulgation of the law shall be postponed without considering the requests of individuals. If individuals do not commit any misdemeanour during one year and any felony during the next five years, no action shall be brought against them. If they commit any misdemeanour or felony, the inquiries and trials shall be continued;

the provisions that are in favour of individuals shall be applied only to those misdemeanours and felonies enumerated in the law;

those who shall not benefit from the provisions of the law include those who:

- a. benefited from a provisional release and were pardoned before the promulgation of the law and went on to commit another offence or crime,
- b. were disciplined because of their actions in prisons after the promulgation of the law,
- c. if there is a conviction sentence or detention order against them, do not apply to the related authority within one month; and

those individuals who benefit from the law shall not benefit from 6 days' reduction according to general execution provisions.

In their application to the Constitutional Court, the courts claimed that the law included some misdemeanours and some felonies while excluding some others. Thus, it made possible that individuals sentenced to longer terms of imprisonment benefit from the law, whilst individuals sentenced to shorter terms do not. The courts alleged that this situation is contrary to the provisions of the Constitution, especially to the principles of equality and the rule of law.

The Constitutional Court considered that parliament has discretionary power regarding the name and application date of the law; it also observed that it may not be asserted that a just differentiation between individuals having a different status and under different conditions is contrary to the equality principle. It depends on just reasons not to include the misdemeanours and felonies provided in different laws such as the Military Criminal Code, the Law on Forests and the Law on Prohibition and Pursuing of Smuggling.

Individuals who committed misdemeanours and felonies requiring longer terms of imprisonment benefit from the law. On the other hand individuals who committed misdemeanours and felonies requiring shorter terms of imprisonment do not benefit from the law. This situation may not be considered as a contradiction to the equality principle since it has just reasons not to include the shorter punishments

under the law, for lawful purposes. For that reason, the Constitutional Court rejected applications made according to types of misdemeanours and felonies.

On the other hand, according to the systematic structure of the Turkish Criminal Code, misdemeanours and felonies envisaging the same legal interest should be dealt with at the same division of the Code included within Law 4616. However, some offenders or criminals of the same division did not benefit from Law 4616. The Constitutional Court decided that it is contrary to the Constitution to include serious misdemeanours and felonies within Law 4616 and not to include less serious misdemeanours and felonies despite the fact that they are regulated within the same division and pursued the same legal interest. Therefore, the Court annulled these provisions.

Furthermore, the Court considered that by laying down the same provisions for life sentences and 36 years' imprisonment, Law 4616 corrupted the balance which had existed between such sentences. Therefore, the Court annulled this provision.

The law did not give an option to individuals to benefit or not to benefit from the law. The law did not provide rules in favour of individuals who had benefited from conditional release before the promulgation of this law. Likewise, it did not provide rules in favour of prisoners disciplined after promulgation of this law. Moreover, the law did not ensure provisions in favour of individuals on whom there is a detention order or a conviction decision if they do not apply to competent authorities within one month after promulgation of the law. The Constitutional Court found that these provisions created inequalities and unjust results. Consequently, these provisions were also annulled.

The Constitutional Court decided that some of the annulled provisions should take effect within six months after publication of the judgment in the Official Gazette.

The President, Mr M. Bumin, and the members, E. Ersoy, S. Akbulut, Y. Acargün, S. Adalı, and A. Hüner, had dissenting opinions.