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Headnotes:

It is clear that limitless discussions and questions in the parliament prevent its proper functioning. However, excessive restrictions on questions and motions and on the period of time allotted for speeches before the parliament are unconstitutional.

Summary:

Certain amendments were made to the Rules of Procedure of the Turkish Grand National Assembly, containing a number of provisions restricting discussions and questions in the Assembly. A number of deputies (115) brought an action before the Constitutional Court in order to have these provisions annulled.

The amendment made to Article 60 of the Rules of Procedure of the Turkish Grand National Assembly provides that: "While debating draft bills and proposed laws in the Assembly, speeches made on behalf of political party groups, parliamentary commissions and the government are limited to twenty minutes and speeches made by deputies to 10 minutes." Before the amendment, as far as questions and answers were concerned, there were no restrictions. The time limit for questions and answers was restricted by the provisions of the amendment to ten minutes.

The Court recalled that deputies have a responsibility to ensure that political preferences and choices are respected by allowing for broad participation within the parliament in contemporary democracies. Thus, as regards the need to reflect the will of the parliament, the importance of questions and answers cannot be denied. Furthermore, it may be necessary to allow time for thorough questions and answers in the case of some complicated regulations, in order for deputies not having sufficient information about the subject to understand them. Consequently, when

debating draft bills and proposed laws, it is unacceptable to restrict question and answer time to only ten minutes and to prevent deputies from exercising their right to raise questions.

On these grounds, this provision was annulled.

As regards the amendment to Article 81.1.b of the Rules of Procedure, after draft bills and proposed laws have been debated, questions are asked and answers given. The impugned provision stipulates that "no question may be asked with respect to specific articles".

It is clear that limitless debate and endless questions hamper the functioning of the legislature. However, an absolute prohibition on asking questions about specific articles would prevent the deputies from exercising the powers laid down in Article 87 of the Constitution and from carrying out their duties.

The Court concluded that this amendment should also be annulled.

In conformity with Article 81.1.d of the Rules of Procedure as amended, articles concerning the implementation and date of entry into force of draft bills and proposed laws shall not be debated and no motion may be made on that subject.

In some cases it is necessary to debate the date of entry into force of a law or provisions regulating its implementation, since these provisions may be just as important as other articles of the draft bill or proposed law. Some restrictions may apply to such debates. However, an absolute prohibition on holding such debates may be incompatible with the principle of democracy.

The same provision further provided that specific articles of laws on the ratification of treaties concluded with foreign states and international organisations shall not be debated and no motions may be tabled with respect to such matters.

According to Article 90 of the Constitution, "the ratification of treaties concluded with foreign states and international organisations on behalf of the Republic of Turkey, shall be subject to adoption by the Turkish Grand National Assembly by a law approving the ratification". This article thus gives the Assembly competence to ratify or not to ratify treaties. Where it is possible to make reservations under a given treaty, the Assembly has the competence to decide on such matters. It is clear that this competence may only be exercised through the holding of debates in the Assembly. Moreover, the date of entry into force of the treaty may also be examined by the Assembly, by way of debates and motions.

Therefore, the above provision was found to be contrary to the Constitution.

Article 81.4 of the Rules of Procedure as amended provided that "Political party groups, the government and the committee are given five minutes to make their speeches".

It cannot be denied that political parties play a major role in reflecting the will of the people through the legislative and executive branches of power. Under Article 68 of the Constitution, "political parties are indispensable elements of democratic political life". Hence, the participation of political parties in the legislative process must be ensured. On the other hand, given the important roles they have to play, it is clear that the participation of the government and of the relevant committee must also be ensured. The Court found that five minutes was not enough time for these bodies to participate in the legislative process and to perform their duties appropriately.

This provision was therefore also annulled.

According to the last sentence of Article 87.1 of the amended Rules of Procedure, the government and the committee may table only one motion and deputies may table at most 3 motions, including motions concerning unconstitutionality.

The Court noted that contemporary democratic life requires that problems and any motions with respect to such problems must be debated between the government and the opposition. It is a requirement of democracy that a balance between these different viewpoints be achieved. The important point in the legislative process is that the real will of the parliament must be implemented after the debates. It is a reality that the motions tabled and debates held help to shape the will of the parliament. Restricting the number of motions that may be tabled limits some possibilities such as including or excluding some provisions, or adding new or even temporary provisions to a given law. If exercising the competences and duties of the members of the Parliament is made excessively difficult, the legislature may not function properly within the meaning of Article 87 of the Constitution.

This provision was therefore also considered to be contrary to the Constitution and was annulled.

Finally, Article 91 of the Rules of Procedure as amended provided that the procedure for debates on basic laws, on the Rules of Procedure and on reconstruction laws related to the economic and technological development of the country was to be changed in certain ways.

In order to regulate the exercise of the competences and duties of the parliament, the Rules of Procedure must have certain characteristics: in particular, they must respect the requirement of certainty and they must be general, abstract and predictable. The concepts of "basic laws" and "laws on reconstruction that are directly related to economic and technological development" are not clear, and

many laws may be included within these concepts. For such laws, the procedure to be followed by the parliament may not be clear in advance. If the procedures applicable to debates and voting are not known beforehand, objectivity will not be guaranteed. Thus, the impugned provision does not have the necessary characteristics mentioned above and may run counter to the principle of the rule of law.

This provision was found to infringe Articles 2 and 87 of the Constitution.

Members Fulya Kantarcioglu, Rüstü Sönmez and Enis Tunga issued dissenting opinions on different provisions.