

**08.10.2002, E.2002/38, K.2002/89**

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**Subject** : Conditions of access, Secret services, Right to participate in political activity, Electoral rights, Security service, access / Political party, membership.

Headnotes:

The requirement not to have been a member of any political party for five years prior to being employed by the special security organisations is contrary to the Constitution in so far as this requirement prevents individuals from participating in political organisations. There are no requirements for employment in the public service other than the requirements of office.

Summary:

Twelfth Chamber of the Council of State applied to the Constitutional Court to strike down Article 16.h of Law 2495 (Law on Protection and Security of Some Institutions and Establishments).

This provision requires that in order for a person to be employed by the Special Security Organisations, that person must not have been a member of any political party or not have performed any duty for any political party for at least five years before the date of application for a job at the Security Organisation.

The rights to vote, to stand for election, to engage in political activities and to take part in a referendum are among the indispensable safeguards of a democratic state. In Article 67 of the Constitution, those principles are set out so as to guarantee these freedoms. Article 68.1 of the Constitution states: "Citizens have the right to form political parties and, in accordance with the established procedures, to join and withdraw from them". Article 68.5 made some exceptions that "judges and prosecutors, members of higher judicial organs including those of the Court of Accounts, civil servants in public institutions and organisations, other public servants who are not considered to be labourers by virtue of the services they perform, members of the armed forces and students who are not yet in institutions of higher education, shall not become members of political parties".

The freedoms safeguarded by these two articles may only be realised when participation in political parties is encouraged and when the obstacles to participation are eliminated.

According to Article 13 of the Constitution, fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant without infringing upon their essence. Since in Articles 67 and 68 of the Constitution do not set up any obstacles to being member of a political party with the exception of the professions listed, the restriction in Article 16.h of Law 2495 does not comply with the Constitution.

Moreover, under Article 70 of the Constitution, every Turk has the right to enter the public service and no criterion other than the qualifications for the office concerned shall be taken into consideration for recruitment into the public service.

There is no doubt that the requirement not to have been a member of any political party for the five years prior to application is not a criterion to be taken into account by the special security organisations office.

Therefore, the challenged provision is contrary to Articles 2, 13, 67, 68 and 70 of the Constitution. It was struck down unanimously.

Supplementary information:

Case no. E.2002/38, K.2002/89.