

**24.03.2004, E.2002/43, K.2003/103**

**Date** : 24.03.2004  
**Number** : E.2002/43, K.2003/103  
**Official Gazette** : 17.03.2004, 25405  
**Subject** : Powers, Freedom of association, Association, dissolution / Association, autonomy / Association, state intervention, power, delegation to executive.

Headnotes:

Giving competence to the executive power to dissolve associations and their organs, establish temporary committees, amend or repeal the statutes of associations, and reorganise associations is contrary to the freedom of association. Associations may only be dissolved by court decisions.

Summary:

The 2nd Chamber of the Court of Cassation and the 10th Chamber of the Council of State (the 10th Chamber of the High Administrative Court) applied to the Constitutional Court alleging that Articles 1 and 2 of Law 4552 (the Law on Amendment of the Association Law) were contrary to the Constitution.

The Constitutional Court reviewed only Article 1.2 of Law 4552 and rejected other parts of the application since those parts were not applicable to the cases before the Court of Cassation and the Council of State.

The impugned provision of Law 4552 states that the Council of Ministers has the competence to dissolve the organs of the Red Crescent of Turkey and the Turkish Aeronautical Association, and to establish temporary organs in order to carry out the functions of the associations, as well as to amend or repeal the statutes of those associations and reorganise the associations on the basis of the reports by the relevant authorities with powers of inspection.

Since the plaintiff was the Turkish Aeronautical Association in the cases before the Court of Cassation and the Council of State, the Constitutional Court reviewed the application with respect to the Turkish Aeronautical Association, meaning that the judgment would apply only to the Turkish Aeronautical Association and not to the Red Crescent of Turkey.

Article 33 of the Constitution states:

"Everyone has the right to form associations, or become a member of an association, or withdraw from membership without prior permission.

No one shall be compelled to become or remain a member of an association.

Freedom of association may only be restricted by law on the grounds of protecting national security and public order, or prevention of crime commitment, or protecting public morals, public health.

The formalities, conditions, and procedures governing the exercise of freedom of association shall be prescribed by law.

Associations may be dissolved or suspended from activity by the decision of a judge in cases prescribed by law. In cases where delay endangers national security or public order and in cases where it is necessary to prevent the perpetration or the continuation of a crime or to effect apprehension, an authority designated by law may be vested with power to suspend the association from activity. The decision of this authority shall be submitted for the approval of the judge in charge within twenty-four hours. The judge shall announce his decision within forty-eight hours, otherwise this administrative decision shall be annulled automatically."

The right to form associations entails guarantees that the associations may freely constitute their statutes, may change them, may determine their organs, and may be dissolved against their will only by court decisions. Detailed provisions on associations are contained in the Law on Associations and relate to their foundation, constitution of their organs, amendment of their statutes, dissolution by court decision and prohibition.

The fundamental elements of associations are their statutes and their organs. Associations may freely constitute their statutes, and may change and determine their organs. Associations may be dissolved against their will only by court decisions.

Article 13 of the Constitution provides that fundamental rights and freedoms may only be restricted by law, in conformity with the reasons mentioned in the relevant , and without infringing upon their essence. Moreover, the restrictions must not be in conflict with the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular Republic and the principle of proportionality.

It was a clear interference with the right of association to give the executive power the competence to dissolve the organs of the Turkish Aeronautical Association, to establish temporary committees or to change its statutes. Such interference had to be based on one of the reasons mentioned in the relevant . Since none of the reasons mentioned in Article 33 of the Constitution that would have permitted restriction existed, the impugned provision was contrary to the Constitution. Therefore, it was unanimously annulled.

Justices A. Hüner and F. Kantarciodlu delivered dissenting opinions on the reasoning of the judgment.