

22.05.2003, E.2003/28, K.2003/42

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Headnotes:

Where a provision of a decree having force of law is not a provision issued during a period of martial law or state of emergency, that provision must be based on an empowering law.

Summary:

The 5th Chamber of the High Administrative Court (Council of State) applied to the Constitutional Court alleging that the amended Article 7 of the Decree Having Force of Law 285 was contrary to the Constitution.

The amended Article 7 of the Decree Having Force of Law 285 sets out that an action for annulment may not be brought (to the Administrative Courts) against administrative decisions on the use of the competences granted to the Regional Governor during a state of emergency by the Decree Having Force of Law 285.

Articles 91.1 and 91.2 of the Constitution states:

"The Turkish Grand National Assembly may empower the Council of Ministers to issue decrees having the force of law. However, the fundamental rights, individual rights and duties included in the First and Second Chapter of the Second Part of the Constitution and the political rights and duties listed in the Fourth Chapter, cannot be regulated by decrees having the force of law except during periods of martial law and states of emergency.

The empowering law shall define the purpose, scope, principles, and operative period of the decree having the force of law, and whether more than one decree will be issued within the same period."

Bearing those provisions in mind, decrees having the force of law may only be issued by the Council of Ministers only upon it being empowered to do so by a law. Since the amended Article 7 of the Decree Having Force of Law 285 was not based on an empowering law, it was contrary to Article 91 of the Constitution and had to be annulled.

Justices Akbulut, Huner, Ersoy and Tugcu delivered dissenting opinions.