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Headnotes:

Since persons in the armed forces do not have the same status as civilians, the application of different rules of criminal investigation to soldiers in the field is not unconstitutional. The national duty may necessitate that some criminal investigations be postponed until the national duty has ended provided that the imprisonment term for the alleged crime does not exceed a certain time limit. Such a postponement is within the discretionary power of the legislation and does not infringe the Constitutional rules.

Summary:

Article 20 of the Law on the Establishment and Procedures of Military Courts, no. 353 was brought before the Constitutional Court by two different courts, with an allegation of unconstitutionality.

The Constitutional Court examined the constitutionality of the first paragraph of Article 20 of the Law since the other parts of the Article were not related with the cases before the two courts.

According to the impugned provision of Article 20.1 of Law 353, procedures of criminal investigation against soldiers shall be postponed until they complete their military duty provided that the upper limit of the offence does not exceed one year of imprisonment and the offence has been committed before joining the army.

The principle of the rule of law, as regulated in Article 2 of the Constitution, means that the State shall respect and protect human rights and shall establish a legal order on the basis of equity and equality and its acts and actions shall be subject to judicial review. In a state governed by the principle of the rule of law, the lawmaker is not only under obligation to ensure the constitutionality of laws, but also under obligation to ensure that the constitution is harmonious with the universal rules of the law.

On the other hand, Article 10 of the Constitution provides: "All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such

considerations. No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings." This rule requires that the same rules be applied to persons who are in the same position and prevents creation of privileged societies and persons. When different rules are applied to the persons having the same status, it is contrary to the principle of equality and the rule of law. Some circumstances may require the application of different rules to some persons and societies having the same status.

Civil persons who are in the armed forces during the legal proceedings do not have the same status as civilians. Soldiers who are suspected of having committed an offence while they were civilians are not in the same position as civilians. When individuals join the army and serve their compulsory military duty, they will be in a different legal position. Then, if they are legally in a different position, applying different rules to those individuals does not infringe the Constitution.

According to the impugned provision, the criminal investigation against soldiers shall be postponed if some other conditions exist. On the other hand, the impugned provision is applied to acts punishable by not more than one year imprisonment. The acts punishable by less than one year imprisonment are not of the same nature as the acts requiring more than one year imprisonment. The Lawmaker gave more importance to the military service in order not to impede national service as it is regulated in Article 72 of the Constitution. Under Article 72, the military service is the right and duty of every Turk. The impugned provision does not contain any rule that the State shall relinquish its power to penalise and it does not infringe the right to a fair trial and the right of litigation either as plaintiff or defendant (Article 36 of the Constitution).

Therefore, the allegation of unconstitutionality was rejected.

Supplementary information:

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