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Headnotes:

Arbitration boards of bars may not be regarded as independent and impartial courts within the meaning of Articles 9 and 36 of the Constitution since composition of these boards and the procedural rules applied, are not in conformity with the constitutional rules. The provisions related to independence, experience and procedural rules of the arbitration boards must be regulated by law.

Summary:

Article 167 of the Law on Lawyers, no. 1136 (as amended by the Law no. 4667) was brought before the Constitutional Court by three different courts, alleging its unconstitutionality.

The Constitutional Court examined the constitutionality of the first sentence of the first paragraph of Article 167 of the Law on Lawyers, since the other parts of the article were not related to the cases before the applying courts.

The first sentence of the first paragraph of Article 167 of the Law on Lawyers provides: "all conflicts issuing from the contracts of the profession of law and their fees shall be solved by the arbitration board of the bar where the legal services were performed".

Examining the provisions in Article 167 of the Law on Lawyers, the Constitutional Court held that the arbitration boards of the bars are functioning as a branch of the judiciary. The decisions taken by those boards are final and binding. The Lawyers constitute a majority of the members of those boards, and the applications against the decisions taken may only be submitted for procedural reasons.

Article 9 of the Constitution provides that judicial power shall be exercised by independent courts on behalf of the Turkish Nation. In order to safeguard the right of litigation of the parties the following qualifications are indicated in Article 36 of the Constitution (as amended in 2001): "Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through lawful

means and procedures. No court shall refuse to hear a case within its jurisdiction." The duty to conclude trials as quickly as possible and at minimum cost is given to the judiciary in Article 141 of the Constitution. Where performance of this duty is aggravated under the pressure of a heavy workload, it may be deemed necessary to create alternative legal procedures in order to ensure the effectiveness of constitutional principles. In those circumstances, the legislative power may stipulate an obligation to apply to the arbitration board of the bars in order to resolve conflicts before applying to the courts. When the structure and the procedures of the arbitration boards are taken into account, application to ordinary or higher courts must be guaranteed according to the requirements of principle of the rule of law. Meanwhile, the nature of the decisions, the independency and impartiality of the arbitration boards must be regulated by laws.

For those reasons the Constitutional Court found that the impugned provision was in conflict with Articles 9 and 36 of the Constitution and that it should be annulled.

Supplementary information:

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