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Headnotes:

A further examination is not obligatory for individuals who have passed the public official examination after 12 September 1980 but were not employed as a result of the security investigations conducted against them.

It would be contrary to the equality principle of the Constitution to require the candidates for public officials to take examinations if the reason they were not employed was the security investigations conducted against them.

Summary:

Ankara 3rd Administrative Court applied to the Constitutional Court alleging that provisional Article 1 of Law 4045 (the part relating to public officials) was contrary to the Constitution.

Some individuals who passed the examinations for public officials and public workers held by ministries or other public institutions after 12 September 1980 (date of the *coup d'état*) were not employed or were dismissed as a result of security investigations conducted against them.

In 1994 the impugned provision made it possible for those individuals to take the examinations held by the ministries or other public institutions provided that they had not lost the qualifications set out in the related regulations with the exception of that of the age-limit. Under the impugned provision, if they pass the examinations, the salaries and other benefits related to past will not be paid.

At the material time, Article 10 of the Constitution provided:

"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."

According to that article, where individuals having the same legal status are subjected to different rules, the equality principle is violated. In other words, where the status of the individuals is equal, then those individuals must be subjected to the same rules. The characteristics in the legal status may require different rules. The Court recalled that it had annulled provisional Article 1 of Law 4045 (the part relating to public workers) on 21 May 1998. After that, a further examination was no longer necessary for candidates for public posts who had passed an examination after 12 September 1980 but had not been employed. The security investigation conducted against them was not to be taken into account. They had to be employed by the public institutions without fulfilling any other requirement, since they had once passed the examination for public officials.

Consequently, the part of the provisional Article 1 of Law 4045 relating to the public officials was contrary to the Constitution and was unanimously annulled.

Supplementary information:

After the *coup d'État* on 12 September 1980 in Turkey, some individuals passed the examinations either for public workers or public officials. Since the outcome of the investigations conducted against some of them were negative, they could not start to work. Provisional Article 1 of Law 4045 gave them the possibility to take another examination. Under that article, if they passed, they could start to work as a public official or public worker. On 21 May 1998 the Court annulled that article with regard to public workers. The present judgment removed the inequality between individuals who had passed the examinations for public workers and those who had passed the examinations for public officials after the *coup d'État*.