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Headnotes:

The rate of allocation of revenues determined by law may be increased or decreased when the need to change arises. As determining the optimum rate is impossible, and changing situations may need different rates, it is within the discretionary power of the parliament to determine the rates and the period to be applied provided that they are not immoderate and unjust.

International agreements on defence and security do not need the approval of the parliament. Agreements of an economic and commercial nature may not be exempted from promulgation in the Official Gazette.

Summary:

A group of deputies brought an action before the Constitutional Court alleging that some provisions of Articles 6, 7 and 10 of Law no. 4969 were contrary to the Constitution.

I. Articles 6 and 7 of Law no. 4969

Article 6 amended Law no. 2389 governing the allocation of the general budget tax revenues to local administrative bodies. According to Article 6, the current rate of allocation of the general budget revenues to local administrations (6%) shall be applied as 5% until the end of 2003.

The Constitutional Court noted that, in order to remove the negative effects of the reduced allocation rate to the local administrative bodies, "additional property tax" (a kind of municipality tax) was introduced and some other precautions were taken by Laws 4837, 4958 and 4811.

Article 7 amended the Law on Metropolitan Municipalities and provided that the allocation of the general budget tax revenues to the metropolitan municipalities shall be applied as 3.5% (currently 4.1%) until the end of the year 2003. Under the last sentence of the last paragraph of Article 127 of the Constitution, local

administrative bodies shall be allocated financial resources in proportion to their functions.

The Court considered that the determination of the rate of allocation of revenues to local administrations from the general budget tax revenues is within the discretionary power of the parliament. The determination of the allocation rate of tax revenues to local administrative bodies is therefore not contrary to the Constitution.

II. Article 10 of Law no. 4969

A. Paragraph (A)

According to this provision, the Committee of Ministers may give individuals and institutions competence on behalf of the Turkish Republic to negotiate and sign agreements on donations and aid aimed at defence and security, with the exception of those competencies which belong to the President and the Prime Minister, and such agreements shall come into force through a decree of the Committee of Ministers. The deputies alleged that the mentioned provision is not in conformity with the Constitution since it may not be regarded as one of the exceptions enumerated in Articles 90.2 and 90.3 of the Constitution.

Under Article 90.3 of the Constitution, agreements in connection with the implementation of an international treaty, and economic, commercial, technical or administrative agreements which are concluded on the basis of an authorisation given by law shall not require approval by the Turkish Grand National Assembly. Since there is no need to enact approving law on international agreements aimed at defence and security, the provision that "the agreements on donations and aid aimed at defence and security shall come into force through decrees of the Committee of Ministers" is not contrary to the Constitution.

B. Paragraph (C) of Article 10 of Law no. 4969

This paragraph stipulated that agreements signed under Law no. 4749 are exempted from the provisions of Law no. 1322 on the Promulgation, Publication and Validity of Laws and Government Decrees (dated 23.05.1928) and shall not be promulgated in the Official Gazette. It is alleged that this provision is contrary to Articles 90 and 104.b of the Constitution.

Under Article 90.3 of the Constitution, "Agreements in connection with the implementation of an international treaty, and economic, commercial, technical or administrative agreements which are concluded on the basis of an authorisation given by law shall not require approval by the Turkish Grand National Assembly. However, agreements concluded under the provision of this paragraph and

affecting the economic or commercial relations and private rights of individuals shall not come into effect unless promulgated."

In general, the agreements enumerated in Law no. 4749 are concerned with the procedures of public funds and debts having an economic and commercial character. Without taking into consideration the fact that at least some of the agreements listed in Law no. 4749 are among the ones to be promulgated in the Official Gazette, it is unconstitutional.