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Headnotes:

Since the persons who falsify tax documents and those who use those documents do not have the same legal status, they can be sanctioned differently. Furthermore, the possibility for the persons who use falsified tax documents to benefit from certain provisions while those who falsify tax documents cannot benefit from the same provisions, is constitutional.

Summary:

Under Article 359 of the Tax Procedures Law (hereinafter: "Procedures Law") the persons who falsify tax documents and the ones who use those documents shall be sentenced to a certain period of imprisonment. Article 14.1 of the Law on Tax Reconciliation (hereinafter "Reconciliation Law") provides that persons who have committed the crimes stated in Article 359 of Procedures Law before 31 August 2002 shall not be prosecuted, that the indictments on those crimes shall be removed and finally that final court decisions shall not be executed. However, the Article 14.2 of the Reconciliation Law stipulates that the ones who totally or partially falsify the tax documents may not benefit from the provisions of Article 14.1.

Two Assize Courts appealed to the Constitutional Court alleging that Article 14.2 of the Reconciliation Law was contrary to the Constitution. They alleged that Article 14 of the same Law encompassed different rules for individuals who falsify the tax documents and for the ones who use those documents, while Article 359 of the Reconciliation Law provided for the same sanctions (imprisonment from 6 months to 3 years) for both.

A State governed by the principle of the rule of law as provided for in Article 2 of the Constitution is a State which respects human rights and strengthens those rights and freedoms. Its acts and actions must be open to judicial review and the legislator must be aware that there are fundamental principles governing the laws and those principles have to be respected.

In a State governed by the rule of law, the lawmaker may determine which actions shall be deemed as crimes and which sanctions shall be applied to those crimes

within the framework of the general principles of the Constitution and those of the criminal law.

Therefore, it is within the discretionary power of the lawmaker to exclude individuals who falsify tax documents from the application of the Law on Tax Reconciliation while the ones who use the falsified documents in their tax declarations can benefit from the provisions of the Law on Tax Reconciliation. Using falsified tax documents may not be regarded as falsifying those documents since the use of falsified documents may have been committed unknowingly.

On the other hand, equality before the law does not mean that everybody shall be bound by the same rules. It is a natural consequence of the principle of equality that individuals having the same legal status shall be bound by the same rules, while individuals having different legal status shall be bound by different rules. Since the ones who falsify tax documents are in the same position as the ones who use those documents in their tax declarations, they may not be bound by the same rules.

Therefore, the Constitutional Court did not find the contested provision unconstitutional and the demand was unanimously rejected.