

## **16.06.2004, E.2003/12, K.2004/69**

**Date** : 16.06.2004  
**Number** : E.2003/12, K.2004/69  
**Official Gazette** : 23.10.2004, 25622  
**Subject** : Powers, Equality, Criminal proceedings, Sentence, criminal,suspension / Judge, discretion.

### Headnotes:

Which actions shall be deemed a crime or offence and which penalties shall be given to those crimes is to be determined by the legislature. The same rule is applied as far as the possibility of the suspension of the sentences given is concerned. Heaviness of the crimes or the offences is not determinant in the application of suspension of sentences. Having a sentence suspended does not constitute a right for the convicted person. Since individuals who have committed different acts do not have the same legal status, the application of different rules to those individuals does not infringe the equality principle.

### Summary:

Two of the Criminal Courts of First Instance brought an action in the Constitutional Court alleging that a provision of Article 2.3 of Law no. 1072 (the law on playing machines such as roulette, table football and other similar ones) was contrary to the Constitution.

In Article 2 of Law no. 1072, some sanctions have been laid down for those who act contrary to the provisions of this law. The objected provision states that the sentences given under the provisions of Law no. 1072 shall not be suspended. The trial courts which brought the action before the Constitutional Court pointed out that the sentences given under Law no. 1072 may not be suspended while other penalties which are much heavier may be suspended under general and current regulations. According to them this rule infringes the equality principle in Article 10 of the Constitution.

In its judgment, the Constitutional Court stated that it is for the legislature to determine which actions shall be deemed a crime or offence and which penalties shall be given to those actions. According to Article 6 of the law on the Execution of Penalties (no. 647) sentences other than fines may be suspended under certain circumstances. Suspension is therefore not a right for the convicted person and it is within the power of appreciation of the judge.

When the legislature stipulates different sentences for different acts, the legal benefit is taken into account. Since those who commit different acts do not have

completely the same legal status, they may not be given the same sentences. Therefore, the impossibility of suspending some sentences derives from the fact that persons who committed different acts do not have the same legal status. As a result the Constitutional Court concluded that the objected provision is not contrary to Article 10 of the Constitution (equality before the law).

Therefore, the demand was rejected.