

**30.06.2004, E.2002/41, K.2004/90**

**Date** : 30.06.2004  
**Number** : E.2002/41, K.2004/90  
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**Subject** : Deprivation of liberty, Confidence, breach, intention / Contract, inability to fulfil, imprisonment.

Headnotes:

Breach of confidence an offence regulated by Article 508 of the Penal Code may only be committed intentionally. In other words, the perpetrator must have knowingly and intentionally committed the action written in the article for his or her own or for another's benefit.

Deprivation of liberty as a sanction for the offence of breach of confidence may not be regarded within the meaning of deprivation of liberty on the ground of inability to fulfil a contractual obligation.

Summary:

The Hatay Criminal Court of First Instance appealed to the Constitutional Court alleging that the phrase "... from 2 months to 2 years imprisonment ..." in amended Article 508 of the Penal Code was contrary to the Constitution.

Article 508 of the Penal Code provides that a person guilty of the offence breach of confidence (i.e. if something is delivered to him and he does not return it in due time or if he or she denies it etc.), shall be sentenced to imprisonment from 2 months to 2 years.

The First Instance Court alleged that the phrase was contrary to Article 38 of the Constitution which provides that "no one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation".

The phrase "inability to fulfil" mentioned in the article indicates a situation of any person *vis a vis* a contract. A person may not benefit from the provisions of Article 38 of the Constitution if he or she is able to perform a contractual obligation. Indeed, the source of the mentioned provision, Article 1 Protocol 4 ECHR, is related to unintentional inability to perform a contractual obligation.

In order to evaluate an offence within the meaning of Article 38/8 of the Constitution, there must be a contract between the parties and any kind of penalty requiring deprivation of liberty must have been provided for the inability to fulfil this contractual obligation. The actions mentioned in Article 308 of Penal Code are not related to inability to fulfil a contractual obligation; on the contrary, they are related to fraudulent actions depending on malice against the injured party. Therefore, the contested phrase is not contrary to the Constitution.

As a result, the demand was rejected unanimously.