

25.07.2005, E.2004/2, K.2005/4

Date : 25.07.2005
Number : E.2004/2, K.2005/4
Official Gazette : 25.07.2005, 25898
Subject : Role, Political party, extraordinary assembly, holding, procedure.

Headnotes:

In order to have an extraordinary general assembly meeting for political parties, one fifth of the existing members of the general assembly must have delivered their petitions to the Party, not one fifth of the total number of general assembly members. Once petitions have been deposited with the Party, it is possible to withdraw from the requests. However, once one fifth of the petitions of the existing members have been obtained, there is a binding effect on the Party as well as on the delegates; the Party is then bound to organise a requested extraordinary general assembly meeting.

Summary:

The Chief Public Prosecutor demanded from the Constitutional Court that the Republican People's Party (CHP) be given a reprimand because of the violation of Articles 14 and 104 of the Law on Political Parties (2820).

The Chief Public Prosecutor alleged that CHP had not extraordinarily convened its general assembly in spite of a call from an adequate number of its delegates under Article 14.6 of the Law on Political Parties.

The Party asserted that the call to convene the general assembly was not made since some of its delegates had withdrawn their demands and some had had no competence to make demands, and thus the adequate number, i.e. one fifth of the total number of delegates, had not been obtained as is provided in the Law and in the Party's Rules.

The Constitutional Court indicated that it should be clarified whether "the total number of delegates" or "the number of currently existing delegates" should be taken into account in order to extraordinarily convene the general assembly. Another question related to whether it was possible for the delegates to withdraw their petitions to the Party once they had deposited them at the Party Office.

In Article 14.6 of the Law 2820 it is stated that "... extraordinary meetings shall be held upon the necessity deemed by the president or by the "Board of Central Decisions" or by the board of directors or by at least one fifth of the members of the general assembly". The Constitutional Court noted that according to Article 14.6, "the members of the general assembly" may demand an extraordinary meeting but not "the total number of members" of the general assembly. In the ninth paragraph of the same article, it is stated that the necessary qualification to convene the general assembly is "the majority of the total number of members of the general assembly" and the phrase "the total number" is clearly emphasised. In the Rules of the Party there is a similar provision.

Then, since it is not possible to take into account the total number of the members of the general assembly - if not stated clearly - the actual number of the members of the general assembly at the date of application should be taken into account in order for an extraordinary meeting to be held.

When the number of members of the general assembly at the application date was taken into account, it was understood that more than one fifth of the members had called for an extraordinary meeting.

On the other hand, between the dates of 6 June 2004 and 21 June 2004, the requests of 348 members had reached the Party Centre. Since 14 of them had legal obstacles, such as resignation, expulsion and similar reasons, the number had dropped to 334. Since only 11 members out of 78 had withdrawn from their request before the date 21 June 2004, (others' withdrawal had reached the Party Centre after that date) the validity of those withdrawals is legally indisputable. However, when those numbers were taken into account, it was understood that the request for an extraordinary meeting had been made by more one fifth of the members. This request had a binding effect on the members and on the Party. For that reason, even if some of the members had withdrawn their requests after one fifth had been reached, the Party would have to have convened the general assembly for an extraordinary meeting. Since, that imperative meeting had not been held by the competent party organs; therefore a decision of reprimand must be given to the Party in accordance with Article 104 of the Law on Political Parties.