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Headnotes:

Specific regulations may apply to the debating of draft bills and proposals on important points of law. Time limits may be imposed on debates. Parliament may debate legislation chapter by chapter rather than article by article. Where this is the case, the information must be accessible. There should be no restrictions on motions by members of parliament, nor should there be any limitation on amendments by the principal commission and by government. Provided that there is an opportunity for members of parliament to voice their opinion during debates, constitutional requirements will be satisfied, if draft bills and proposals are debated chapter by chapter, rather than article by article.

Summary:

I. The case concerns the procedure governing the introduction and debating of legislation before the Turkish Grand National Assembly.

On 30 June 2005, the Procedural Rules of the Turkish Grand National Assembly were amended by Resolution 855. Several members of parliament asked the Constitutional Court to assess the compliance with the Constitution of some of the amended provisions of Article 91 of the Rules.

The Court began by examining the amended first sentence of the first paragraph of Article 91a. This allows for the debate of certain draft bills or proposals on a chapter by chapter basis, rather than article by article. The draft bills in question are either aimed at amending existing legislation or the Procedural Rules of the Turkish Grand National Assembly or they are introducing new legislation. Chapters must not exceed thirty articles. The Plenary of the Assembly may decide upon such a measure, acting upon a proposal by the government, commissions or political party groups and upon a unanimous proposal by the advisory board.

A chapter by chapter debate is only possible if:

- the draft bills contain principles which make fundamental changes to a particular branch of the law;
- they contain significant constitutional concepts relating to a particular branch of law;
- they correlate to specific legislation already in force;
- there is a need for continuity between the articles already in force and the points being introduced by the proposed legislation;

- the proposed legislation has already been subject to such requirements in the past.

The applicants argued that the provisions lacked clarity and accuracy and would prevent participation by members of parliament in debates at parliamentary level. The principle of the rule of law ensures that political power remains within the parameters of the law, and creates an infrastructure in which necessary public activities can be carried out. It also preserves national stability, due to the requirement for clarity and precision of the law. In this regard, members of parliament are under a duty to perform their duties and use their powers as set out in Article 87 of the Constitution. There may be special debating and voting procedures at the Plenary of the Assembly where draft bills and proposals pertaining to comprehensive legal regulations are under discussion. The number of articles to be debated is likely to be high.

II. It was held that the provision under dispute was in compliance with the constitutional requirement of clarity, precision and certainty of the law, and that it did not prevent members of parliament from exercising their powers, under Article 87 of the Constitution. The provision was also in line with an earlier judgment by the Constitutional Court, of 29 April 2003, E.2003/30, K.2003/38. The complaint was accordingly rejected.

The Court went on to examine the second sentence of the first paragraph of Article 91a. This states that if the decision is made to debate draft bills and proposals as chapters rather than articles, chapters will be debated separately under the same procedure which applies to articles, although the articles themselves will not be read.

The applicants suggested that this provision could hinder democratic participation. They warned of the danger that the will of the Assembly might not be reflected in legislation, if chapters containing thirty articles are discussed in the time span which would normally be allotted to one article, and if time limits are to be imposed on debates on laws of significant constitutional importance.

The Court observed that under the provision, each article would be voted upon separately. This would satisfy the requirement of democratic participation in the legislative process. The fact that articles were not read out separately did not mean that democratic principles would be breached, particularly if access was available prior to the debate. Avoiding repetition is desirable in terms of economic use of time. Members of parliament would have the chance to voice their opinions on any provision within draft legislation during the debate on the chapters. This part of the provision was found to be compliant with the Constitution and the complaint was rejected.

The Court studied the second sentence of the second paragraph of Article 91a. This states that members of parliament, primary commissions or the government may put forward motions for amendment. Only two motions for amendment are allowed for each article where these are put forward by members of parliament due to concerns over the constitutionality of the draft bills and proposals. The application is only limited to the second sentence.

The applicants' criticism of this part of the provision was that members of parliament would be limited as to the amount of motions for amendment they could put forward. No such limitation applies to motions for amendment by the principal commission and by the government. They could see no justifiable grounds for such differentiation.

The Court noted that, under Article 68 of the Constitution, political parties are indispensable elements of democratic political life. Article 95 of the Constitution requires that the Procedural Rules of the Turkish Grand National Assembly should be drafted in such a way as to ensure the participation of each political party group in all the activities of the Assembly in proportion to its number of members. The enactment, amendment, and repeal of laws are the principal powers of parliament. Participation of political party groups in proportion to their seats at parliament is a constitutional requirement. There was no scope in this part of the provision for motions for amendment by political groups, and it also restricts members of parliaments' powers to propose changes. It was therefore deemed unconstitutional, and repealed.

Next, the Court turned its attention to the third paragraph of Article 91a, which imposes a time limit of fifteen minutes on replies in debates on the chapters. The applicants contended that the fifteen minute limitation was contrary to the principle of the rule of law. However, the Court found that this limit was acceptable, in view of the fact that the rules on draft bills and proposals were meant to speed up parliamentary debate. The demand was rejected.

The Court then examined the fourth paragraph of Article 91a, which states that "the provisions of Article 81 of the Rules of Procedures are reserved." Article 81 of the Rules of Procedures covers the principles relating to parliamentary debate on draft bills and proposals. Political party groups, commissions and the government may make speeches of no more than twenty minutes on the whole of the draft bill or proposal, or ten minutes on an individual article. Members of parliament can only make speeches of ten minutes on the bill or proposal as a whole, or five minutes on an article.

One of the general principles of the law is that general rules are applied in the absence of specific rules. The Court held that the fourth paragraph did not restrict the power to enact legislation; neither did it contravene the principle of democratic participation.