

**19.12.2005, E.2005/143, K.2005/99**

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Headnotes:

Salaries and allowances of public servants and public officials must be regulated by law. It is contrary to constitutional principles to leave competence in this area to the Council of Ministers.

Public officials of high rank play an important role in the determination of the goals and policies of public organisations. They must accordingly be appointed under the joint signature of the President of the Republic, the Prime Minister and the relevant minister.

Summary:

The President of the Republic asked the Constitutional Court to assess the compliance of Articles 45.2 and 56.1 of the Statistical Law no. 5429 with the Constitution.

1. Article 128 of Law no. 5429

Law no. 5429 provides that some officials, including the president, vice presidents, and head of chambers of the Turkish Statistical Institute could be employed on the basis of a contract without being bound by the provisions of State Officials Law no. 657 and other laws. Article 45.2 of the Law states that the Council of Ministers will decide upon employment procedures, salary rates and benefits for these personnel. The President of the Republic argued that the pay scales and other benefits of the officials employed at the Institute must be set out in legislation, rather than being decided upon by the Council of Ministers.

Article 128 of the Constitution reads as follows: "The fundamental and permanent functions required by the public services that the state, state economic enterprises and other public corporate bodies are assigned to perform, in accordance with principles of general administration, shall be carried out by public servants and other public employees.

The qualifications of public servants and other public employees, procedures governing their appointment, duties and powers, their rights and responsibilities, salaries and allowances, and other matters related to their status shall be regulated by law".

The Turkish Statistical Institute is a public body under the auspices of the State. The duties given to the Institute by law are, without a doubt, classed as public services because they are permanent and regular activities responding to the general and common needs of society. The personnel employed in accordance with the principles of general administration at the Institute are among those mentioned in Article 128 of the Constitution. Under this article, the salaries and allowances of personnel employed at the Institute must be regulated by law. In

spite of that requirement, it is unconstitutional to leave the power to determine the salaries and allowances of such personnel to the Council of Ministers.

## 2. Article 8 of Law no. 5429

This law states that "All appointments at the Institute shall be made by the President of the Institute with the exception of the head of the advisory unit". Before the enactment of Law 5429, some of the appointments at the Institute were made by means of joint signature, i.e. by the relevant Minister, Prime Minister and the President of the Republic. The new law amended the system and removed the requirement of joint signature for the appointment of officials at the Institute. This resulted in a narrowing of the power of the President of the Republic on the appointment of officials.

According to Article 8 of the Constitution, executive power and function shall be exercised by the President of the Republic and the Council of Ministers in conformity with the Constitution and the law. "Signing decrees" is listed in Article 104 of the Constitution as one of the executive functions of the President of the Republic.

The decrees mentioned in Article 104 are those with force of law, various decrees of the Council of Ministers as well as joint appointment decrees of high officials. Since the power and function is carried out by the President and the Council of Ministers, those decrees must be jointly signed in order to have effect.

Thus, it is a constitutional requirement that high-ranking public officials be appointed by a joint signature decree since they are involved in the determination of public policy; they have effective public authority; they have important powers and responsibilities in their leadership roles at the institution; they manage the organisations and staff and represent the institution. According to Article 56.1 of Law no. 5429, all appointments shall be made by the President of the Institute so that his choice alone will determine the appointment of high-ranking public officials with very important duties and responsibilities.

The President of the Institute and the vice presidents are *ex officio* members of the Statistical Council with a vital role in setting official statistical targets and in the functioning of the Institute. They must be regarded as high-ranking officials and be appointed by a joint signature decree.

Therefore, Article 56.1 of the Law no. 5429 is contrary to the Constitution and must be repealed.

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