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Headnotes:

The duty and competence of granting licences for the construction and the usage of buildings are administrative functions. Control over this issue is a basic function of the public services and is of a permanent nature. As such, it must be performed in accordance with the principles of general administration. The Constitution provides that such functions must be carried out by public servants and other public employees. Any legislation allowing this to be done by private sector employees would be at variance with the Constitution.

Only the State or public corporations have the competence to expropriate privately-owned real estate. Public corporate bodies may, however, expropriate real estate in favour of real or legal private personalities if this is in the public interest.

Summary:

The President of the Republic requested a ruling from the Constitutional Court as to the compliance with the Constitution of certain provisions of Technology Development Zones Law no. 4691.

The Court began by examining the third sentence of Article 4.3 of Law no. 4691. This states that licences and permissions covering the use of land and the planning, building construction and usage of buildings and establishments within the technology development zones shall be given to "the administrative company", which will then control them.

The President of the Republic suggested that the granting of licences and permissions for the construction and usage of buildings is a basic public service of a permanent nature. As such, it must be performed in accordance with the principles of general administration. However, the provision under scrutiny bestows these powers upon foreign private companies. Arguably, therefore, the provision is at odds with the principles set out in Article 128 of the Constitution.

All activities relating to the sub-structure of the land and all local and regional plans concerning investment have a bearing on the way land is to be used. As a precondition for licences and permissions, planning procedures must be carried out in accordance with statute, regulations and zoning plans. Owners must prepare plans for the usage of the land and the buildings and establishments to be set up there and submit them to the relevant authority. The granting of licences and permissions for the construction and the usage of buildings and establishments is one of the controls and responsibilities forming part of the construction process.

In its Decision of 11 December 1986, the Constitutional Court held that the duty and competence of granting licences for the construction and the usage of buildings are administrative functions. Control over this issue is a basic function of the public services and is of a permanent nature. As such, it must be performed in accordance with the principles of general administration. Under Article 128 of the Constitution, the above functions must be carried out by public servants and other public employees.

The third sentence of Article 4.3 of the Law no. 4691, on the other hand, envisages that the above permissions may be given by "administrative companies". This law also defines "administrative company" as any private joint stock company. Such a company will employ its staff under labour law principles. Since the personnel employed by a private company cannot be regarded as public servants or public employees, this would mean that private sector staff would be granting licences and permissions, which of course contravenes Article 128 of the Constitution. The above provision was found to be unconstitutional and repealed. Justice Mr H. Kiliç put forward a dissenting opinion as to this part of the judgment.

The Court then turned to the first sentence of Article 5.5 of Law no. 4691. This provides that "administrative companies may expropriate or have real estate expropriated on their behalf if this is to the public benefit."

The President of the Republic suggested that expropriation is, in essence, a kind of competence afforded to the State and public bodies. Expropriation may be made by the State or public bodies in favour of private legal personalities where this would be in the public interest. This is set out in Article 46 of the Constitution. Compensation must, however, be paid in advance.

Expropriation is the termination of private ownership of real estate against the will of the owner to satisfy the needs of society as a whole. The subject of expropriation is privately owned real estate. Only the State or public corporations have the competence to expropriate it.

The above provision gave private legal entities the power to expropriate real estate contrary to Article 46 of the Constitution. Since expropriation requires the use of public power, it may not be regarded as a competence which private companies can exercise, although public corporate bodies may expropriate real estate in favour of real or legal private personalities if this is in the public interest.

The provision was found to be contrary to Article 46 of the Constitution and it was repealed. Justice S. Akbulut put forward a dissenting opinion.