



REPUBLIC OF TURKEY
CONSTITUTIONAL COURT

SECOND SECTION

DECISION

Application No: 2013/1337

Date of Decision: 16/5/2013

SECOND SECTION

DECISION

President : Alparslan ALTAN
Members : Serdar ÖZGÜLDÜR
Osman Alifeyyaz PAKSÜT
Recep KÖMÜRCÜ
Engin YILDIRIM
Rapporteur : Elif KARAKAŞ
Applicant : Necmettin DOĞRU

I. SUBJECT OF APPLICATION

1. The applicant who works as a group (B) police chief in the Police Organization asserted that the principle of equality guaranteed in the Constitution was violated due to the action with regard to the dismissal of his request towards his being considered as a group (A) police chief.

II. APPLICATION PROCESS

2. The application was lodged by the applicant through the Regional Administrative Court of Konya on the date of 12/2/2013. The deficiencies detected as a result of the preliminary administrative examination of the petition and its annexes were made to be completed and it was determined that no deficiency preventing their submission to the Commission existed.

3. It was decided on 14/5/2013 by the First Commission of the Second Section that as it was deemed necessary to take a principle decision in order for the application to be concluded, the admissibility examination be carried out by the Section, that the file be sent to the Section as per paragraph (3) of article 33 of the Internal Regulation of the Constitutional Court.

III. FACTS AND CASES

A. Facts

4. The relevant facts in the application petition are summarized as follows:

5. The applicant works as a deputy superintendent within the Police Organization and is considered to have the status of a group (B) police chief.

6. Through the decision of the Constitutional Court dated 7/2/2008 and numbered M.2005/38. D.2008/53, on the ground that the fact that those who completed their higher education, but were continuing to attend at the course of deputy superintendency on the date of 21/4/2001 on which the Code numbered 4638 entered into force were not considered to be a group (A) police chief constituted a contrariety to the principle of legal security, the expression *“Those who complete the course of deputy superintendency by graduating from four-year higher education institutions prior to the date on which this Law enters into force and...”* as stipulated in provisional article 20 of the Code on the Police Organization numbered 3201 added through the Code dated 6/4/2001 and numbered 4638 was abolished.

7. The applicant filed an application with the request for his being considered as a group (A) police chief in accordance with the mentioned decision by stating that he was a graduate of the course of deputy superintendency and that he also successfully completed the 4-year academy, but this application of him was dismissed with the action of Turkish National Police dated 29/9/2010.

8. The case which the applicant filed for the cancellation of this action was dismissed through the decision of the 2nd Administrative Court of Konya dated 7/7/2011 and numbered M.2011/118, D.2011/1223 on the ground that the decision of annulment of the Constitutional Court dated 7/2/2008 and numbered M.2005/38. D.2008/53 and the decision of annulment thereof dated 17/3/2011 and numbered M.2010/106, D.2011/55 were not related to the case tried, that the situation of the plaintiff needed to be considered according to the provisions of the legislation, that in this respect, no contrariety to law was observed in relation to the action.

9. Upon the applicant's appeal, the decision was approved with the decision of the 12th Chamber of the Supreme Court of Appeals dated 14/2/2012 and numbered M.2011/9379, D.2012/1118.

10. Upon the dismissal of the applicant's request for correction with the decision of the same Chamber dated 5/11/2012 and numbered M.2012/9141, D.2012/7547, the decision became final on the same date. This decision was notified to the applicant on 14/1/2013.

B. Relevant Law

11. Paragraphs ten and sixteen of article 55 of the Code on the Police Organization dated 4/6/1937 and numbered 3201 with the heading of *“Promotion and appointment”* are as follows:

“Out of police chiefs, the graduates of the Police Academy, those who are considered to be the graduates of the Police Academy and those who graduate from at least four-year faculties and academies within the Police Academy aimed at training staff for Turkish National Police shall comprise group (A), those who have successfully completed the course of deputy superintendency shall comprise group (B).

...

Out of group (B) police chiefs, transition of those who graduate from at least four-year higher education institutions into group (A) shall be subject to the following conditions:

a) Working in the rank of chief superintendency for a minimum waiting period prescribed for group (A) police chiefs.

b) Being successful in the written examination and in-service executive training to be separately organized for this group in relation to promotion from the rank of chief superintendent to the rank of Police Chief.

c) Being promoted to the rank of Police Chief through the decision of the Board of Evaluation.

The number of chiefs who will pass from group (B) to group (A) cannot exceed 10% of the number of those who are promoted to the rank of Police Chief from group (A) as of that year."

12. Provisional article 20 of the same Code added through the Code on the Amendment and Ratification of the Decree in the Force of Code on the Amendment of the Code on the Police Organization dated 6/4/2001 and numbered 4638 is as follows:

"The police chiefs who pass from group (B) to group (A) prior to the date on which this Decree in the Force of Code enters into force shall be considered to be within group (A)."

IV. EXAMINATION AND JUSTIFICATION

13. The individual application of the applicant dated 12/2/2013 and numbered 2013/1337 was examined during the session held by the court on 16/5/2013 and the following were ordered and adjudged:

A. Claims of the Applicant

14. The applicant asserted that the principles in article 2 and the principle of equality as guaranteed in the Constitution were violated and filed a request for the holding of a retrial by stating that only the persons who were or were considered to be the graduates of the Police Academy were considered to be group (A) chiefs according to the Code numbered 3201, that the post of deputy superintendency that he was carrying out was considered as the post of group (B) chief, that this situation created an inequality among chiefs who had the same duty and authority in terms of promotion and personal rights.

B. Evaluation

15. Paragraph three of article 148 of the Constitution is as follows:

"Everyone can apply to the Constitutional Court based on the claim that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public force."

16. Paragraph (1) of article 45 of the Code on the Establishment and Trial Procedures of the Constitutional Court dated 30/3/2011 and numbered 6216 with the side heading of "*Right to individual application*" is as follows:

"Everyone can apply to the Constitutional Court based on the claim that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights and the additional protocols thereto, to which Turkey is a party, which are guaranteed by the Constitution has been violated by public force."

17. According to the provisions of the Constitution and Code that are cited, in order for the merits of an individual application that is lodged at the Constitutional Court to be examined, the right, which is claimed to have been intervened in by public force, must fall within the scope of the European Convention on Human Rights (the Convention) and the additional protocols to which Turkey is a party, in addition to it being guaranteed in the Constitution. In other words, it is not possible to decide on the admissibility of an application, which contains a claim of violation of a right that is outside the common field of protection of the Constitution and the Convention (App. No: 2012/1049, § 18, 26/3/2013).

18. The applicant claimed that the principle of equality before law regulated in article 10 of the Constitution was violated. Paragraphs one and five of Article 10 of the Constitution with the side heading of "*Equality before law*" are as follows:

"Everyone is equal before law without being subject to any discrimination based on language, race, colour, gender, political opinion, philosophical belief, religion, sect or similar grounds.

...

The State organs and administrative authorities must act in compliance with the principle of equality before law in all their proceedings."

19. Article 14 of the Convention with the side heading of "*Prohibition of discrimination*" is as follows:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

20. It is not possible to evaluate in an abstract manner the claims of the applicant as to effect that the principle of equality regulated in article 10 of the Constitution and the prohibition of discrimination regulated in article 14 of the Convention have been violated given the expressions in the aforementioned articles and it is absolutely necessary to discuss it in connection with other fundamental rights and freedoms stipulated within the scope of the Constitution and the Convention. In other words, in order to discuss whether the prohibition of discrimination has been violated or not, the claim of violation needs to answer the

questions on which fundamental right and freedom the person was subject to discrimination (App. No: 2012/1049, § 33, 26/3/2013).

21. In the incident which is the subject matter of the application, although it was asserted by the applicant who is a group (B) police chief that a difference was created in terms of personal rights and career between group (A) police chiefs with whom they had the same duty and authority and them and that therefore, the prohibition of discrimination was violated, it was not specified with regard to the use of which fundamental right and freedom the discrimination in question occurred. Also from the content of the application petition, it has been concluded that no connection has been established between the incident which is the subject matter of the application and any of the rights and freedoms within the scope of the Constitution and the Convention.

22. As a result, the subject of the claim of violation of the applicant which is based on article 10 of the Constitution falls out of the field of protection of the fundamental rights and freedoms which are guaranteed by the Constitution and fall within the scope of the Convention.

23. In the light of the reasons explained, as it is understood that the claims asserted in the application petition do not accord with any of the fundamental rights and freedoms which are guaranteed in the Constitution, any of those which fall within the scope of the European Convention on Human Rights and the additional protocols thereto to which Turkey is a party in terms of their subject, it should be decided that the application is inadmissible due to "the lack of venue in terms of subject" without it being examined in terms of other conditions of admissibility.

V. JUDGMENT

It is decided **UNANIMOUSLY** on 16/5/2013 that the application is **INADMISSIBLE** due to "*the lack of venue in terms of subject*", that the trial expenses be left on the applicant.

President
Alparslan ALTAN

Member
Serdar ÖZGÜLDÜR

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Osman Alifeyyaz PAKSÜT

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