



The Constitutional Court Finds the Amendment Regarding Confidential Hearings to Violate the Constitution and Annulled the Amendment

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1. Introduction

A total of 132 members of the parliament filed for annulment before the Constitutional Court, of a phrase in the second paragraph of Article 28 of the Code of Civil Procedure (“*CCP*”), which was amended by Law No. 7251. The relevant article brings in a new criterion for confidential hearings. While the phrase requested to be annulled was “*upon the request of one of the parties in cases where it is absolutely necessary*” before it was amended by Law No. 7251, it was changed to “*or upon the request of a relevant persons, in cases where the superior interest of the relevant persons worth protection makes it absolutely necessary*” with the relevant amendment. Ultimately, the phrase which is subject to annulment, is “*the superior interest of the relevant persons worth protection*”.

2. Concept of Confidential Hearings

The transparency of court proceedings is commonly defined as the accessibility of court activities to the general public unless specified otherwise by law. This transparency comprises two facets: (i) availability of proceedings to the public, and (ii) public presentation of the court's judgment through a public reading in the presence of the involved parties. When considering these two aspects together, the principle of transparency can be succinctly described as granting third parties the freedom to attend hearings, observe the proceedings, and comprehend the court's decisions.

While transparency is the norm, it is procedurally possible to conduct confidential proceedings. Article 141 of the Constitution, in fact, imposes limitations on the principle of transparency. However, it is crucial to emphasize that any restriction on fundamental rights and freedoms is admissible only under circumstances that are outlined in the relevant articles of the Constitution and strictly through legal means, without compromising their essence. Such limitations must align with the letter and spirit of the Constitution, the imperatives of a democratic social order and a secular Republic, and the principle of proportionality. Given that the same restrictions exist both in the Constitution and the CCP, any amendment to the CCP's restrictions must be proportional, conservative, and conform to the framework established by the Constitution.

i. Grounds For the Request for Annulment

The grounds put forward for annulment revolve around the contention that the pertinent provision contradicts with Articles 2, 13, 36, and 141 of the Constitution. The argument put forth is threefold:

Firstly, it is asserted that the provision in question broadens the exceptions to the principle of public court hearings. This expansion creates ambiguity regarding the circumstances and the individuals or entities authorized to request limitations on the publicity of hearings.

Secondly, it is contended that the provision lacks elucidation, leaving practitioners without a clear guide even in its justification.

Thirdly, it is argued that the framework concerning the restriction of public court hearings is also incongruent with the principles outlined in the European Convention on Human Rights.

In summary, the plea for annulment is based on concerns related to the provision's indefinite scope, lack of clarity, and potential non-compliance with international human rights standards as enshrined in the European Convention on Human Rights.

ii. Court's Analysis and Decision

As frequently emphasized by the Constitutional Court, it is not sufficient for a law restricting fundamental rights to merely exist; rather, the legal rules must be specific, accessible, and predictable in a manner that does not allow arbitrariness. Essentially, a law that restricts fundamental rights must possess these qualities and this is a requirement of the rule of law principle guaranteed in Article 2 of the Constitution. In accordance with the principle of legal certainty, which is one of the fundamental elements of the rule of law, legal regulations must be clear, precise, understandable, applicable, and objective, leaving no room for hesitation or doubt, for individuals and the administration. These regulations must include protective measures against arbitrary practices by public authorities. The presence of these qualities in the law is also necessary for ensuring legal security. This principle necessitates the predictability of legal norms, fostering trust in individuals for all actions and transactions with the state, and obliges the state to refrain from methods that undermine this sense of trust in its legal regulations.

Following this, the Constitutional Court invoked Article 141 of the Constitution and clarified that it already outlines the circumstances under which court hearings can be conducted in secret. The Constitutional Court, in its assessment, determined that the specific wording in the relevant provision is inconsistent with the Constitution. This is because the provision introduces additional scenarios where the principle of a public hearing can be restricted, by specifically citing the superior interest of the individuals involved that warrant protection.

However, the Constitutional Court emphasized that limitations on fundamental freedoms are permissible only for reasons explicitly stipulated in the Constitution. Therefore, the Constitutional Court proceeded to annul the relevant portion of Article 28 of the CCP, deeming it incompatible with the constitutional framework governing the restriction of public hearings in court proceedings.

3. Conclusion

Even though the Constitution safeguards fundamental rights and freedoms, it acknowledges the permissibility of restricting them within the established constitutional boundaries. Emphasizing its unwavering commitment to the stringent regulation of such limitations, the Constitutional Court identified the subject-matter phrase as an additional basis for restricting fundamental rights and freedoms. Consequently, the Constitutional Court decided to annul the

specific phrase that was subject to the annulment request, maintaining a firm stance on upholding the integrity of constitutional provisions related to the limitation of fundamental rights and freedoms.

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(First published by Mondaq on January 26, 2024)