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Headnotes:

Assessment for promotion to the higher echelons of the Security Organisation should be carried out with regard to the principle of merit. If the Constitutional Court dismisses an application on substantive grounds, no allegation of unconstitutionality shall be made with regard to the same legal provision until the expiry of ten years from the publication of the Constitutional Court's decision in the Official Gazette.

Summary:

Article 55 of Law no. 3201 on Security Organisation sets out procedures for promotion to the higher echelons of the Security Organisation. Article 155.2 states that promotion will be carried out on merit, with regard to examination and education achievements. The seventh paragraph of this article provides for the establishment of a High Evaluation Board of General Directorate, to determine whether security directors who are candidates for promotion meet the merit criteria, and evaluate and to suggest staff to be appointed to higher posts. The paragraph also states that the President of the High Board will be the General Director of the Security Organisation, and it will comprise Deputy General Directors, the Head of Inspection Unit, the President of the Police Academy and three first rank Security Directors, chosen from Research, Planning and Coordination Unit directors.

Konya Administrative Court asked the Constitutional Court to rule upon the conformity with the Constitution of the phrase "according to merit" in Article 55.2. The Administrative Court suggested that this provision indicated that promotion to higher ranks would be made according to merit, but it did not mention any abstract or objective criteria in order to determine the degree of merit. As it has the potential to cause uncertainty and introduce an element of arbitrariness to the Security Organisation, it is contrary to the Constitution.

Under Article 55 of Law no. 3201, the seniority and merit of candidates for promotion will be taken into account, with a view also to examinations and educational background. However, Article 70/2 of the Constitution provides that "Criteria other than the qualifications for the office concerned will not be taken into account when recruitment is being carried out for the public service". Article 128/2 of the Constitution provides that "qualifications of public servants and other public employees, the procedure governing their appointment, duties and powers, their rights and responsibilities, salaries and allowances, and other matters relating to their status will be regulated by law."

Parallel regulations to Articles 70 and 128 of the Constitution may be found in some articles of Law no. 657 on State Officials. Article 109 of Law no. 657, for instance, stipulates that a personnel file shall be kept for every state official. Article 110 states that a record will be kept

on every official. Reports generated by officials from the higher echelons, inspection reports and declarations of assets shall be placed in those files. Article 111 of the Law no. 657 envisages that personnel and record files will form the basis for the determination of officials' merits, for their horizontal and vertical promotions and for retirement or dismissal procedures. Other provisions of Law no. 657 provide that appraisal records and disciplinary sanctions are to be recorded on officials' record files. It is clear that the phrase "according to merit" in Article 155/2 shall be taken into account within the framework of the provisions in Law no. 657, when security organisation personnel are to be promoted. It cannot therefore be argued that it is unconstitutional to promote security organisation staff according to merit. The complaint was rejected.

The Constitutional Court then examined the phrase "to determine merit conditions" in the seventh paragraph of Article 155. Under Article 152 of the Constitution and Article 28 of Law no. 2949 on The Organisation and Trial Procedures of the Constitutional Court, if the Constitutional Court dismisses a case on substantive grounds, no allegation of unconstitutionality can be made with regard to the same legal provision until ten years have elapsed since publication of the decision of the Constitutional Court in the Official Gazette. The phrase "to determine merit conditions" was reviewed and the case was dismissed by the Constitutional Court on 11 June 2003. The decision was published in the Official Gazette no. 25283 dated 8 November 2003. The applicant's argument was not examined on its merits and was rejected.