THE CONSTITUTIONAL COURT OF THE REPUBLIC OF TURKEY

JUDGMENT

Case Number: E. 2024/43, K. 2024/65
Decision Date: 22/2/2024
Official Gazette Date – Number: 1 August 2024-32619

ACTION FOR ANNULMENT FILED BY:

1. Şerafettin Can ATALAY (E.2024/43)
   Attorneys: Atty. Şevket İLKİZ, Atty. Evren İŞLER, atty. Özgür ERBAŞ, Atty. Yalçın Deniz ÖZEN, Atty. Akçay TAŞÇI

2. Manisa MP Özgür Özel (E.2024/44)

3. Manisa MP Özgür Özel, Afyonkarahisar MP Burcu KÖKSAL, Istanbul MP Gökhan GÜNAYDIN, Mersin MP Ali Mahir BAŞARIR and 125 other Parliament Member (E. 2024/45)

4. Istanbul MP Erkan BAŞ (E.2024/46)
   Attorneys: Atty. Şerif Özgür URFA, Atty. Eren GÖNEN

5. Kars MP Gülistan KILIÇ KOÇYİĞİT, Muş MP Sezai TEMELLİ, Batman MP Mehmet Rüştü TİRYAKİ (Case No. E.2024/47)

Subject- matter of the Action for Annulment: Request for declaring the reading of the letter at the 54th session of the Plenary of the Grand National Assembly of Turkey (TBMM) on 30 January 2024 from the Presidency of Chamber attaching the decision of the 3rd Criminal Chamber of the Court of Cassation, dated 3 January 2024 and numbered E.2023/12611,D. Is. 2024/1, which resulted in the dismissal of Hatay Member of Parliament (MP) Şerafettin Can ATALAY's parliamentary membership, null and void and for the annulment of this decision as it is inconsistent with the Preamble and Articles 2, 6, 84, 85, and 153 of the Constitution.

I. The Grand National Assembly of Turkey Action Subject to Annulment

The action requested to be annulled is the letter written by the Presidency of the 3rd Criminal Chamber of the Court of Cassation addressed to the Presidency of the Grand National Assembly of Turkey (TBMM):

"Presidency of the Grand National Assembly of Turkey

Case Number: E.2024/43, K.2024/65

The decision in the case file registered under our Chamber's number 2023/12611, concerning the decision numbered E2022/1270 and K2022/1463 of the 3rd Criminal Chamber of the Istanbul Regional Court of Appeal, regarding the case numbered E2021/178 from the Istanbul 13th Assize Court, with the additional decision numbered E2021/178, K2022/178 dated 27 December 2023. Upon examination, the decision dated 3 January 2024 and numbered E2023/12611, D. Is2024/1 has been attached to our letter.

for your information."

The reading of this letter at the 54th session of the Plenary of the Grand National Assembly of Turkey (TBMM) on 30 Juanry 2024 and its communication to the Plenary resulted in the dismissal of Hatay Member of Parliament (MP) Şerafettin Can ATALAY from his parliamentary position.

II. Consolidation Decision

1. It was unanimously decided on 22/2/2024 to merge the requests in the case files numbered E.2024/44, E.2024/45, E.2024/46, and E.2024/47, regarding the annulment of the decision made at the 54th session of the Grand National Assembly of Turkey (TBMM) on 30 January 2024, in which the letter from the Presidency of the 3rd Criminal Chamber of the Court of Cassation dated 3 January 2024 and numbered E.2023/12611, D. Is 2024/1 was read, and the determination that the dismissal of Hatay MP Şerafettin Can ATALAY from his parliamentary position was null and void under Article 85 of the Constitution, with the case numbered E.2024/43 due to the legal connection between them. The principal examination will proceed based on the case file numbered E. 2024/43.

III. Examination

2. After the petitions and their annexes, the report prepared by Rapporteur Burak FIRAT, the relevant provisions of the Constitution and the Rules of Procedure of the Grand National Assembly of Turkey (TBMM), and their justifications were read and examined, the necessary considerations were discussed and deliberated:

3. It has been requested to determine that the dismissal of Hatay Member of Parliament (MP) Şerafettin Can ATALAY, as a result of the reading of the letter from the Presidency of the 3rd Criminal Chamber of the Court of Cassation (the Chamber), dated 3/1/2024 and numbered E.2023/12611, D. Is 2024/1, at the 54th session of the Plenary of the Grand National Assembly of Turkey (TBMM) on 30 January 2024, is null and void, and to annul this decision in accordance with Article 85 of the Constitution.

4. The second paragraph of Article 84 of the Constitution states that "*The loss of membership, through a final judicial sentence or deprivation of legal capacity, shall take effect after the Plenary has been notified of the final court decision on the matter*.". Accordingly, for a loss of membership as a result of a final conviction, a finalised

conviction needs to be about for an offence that prevents the individual from serving as a Member of Parliament and the Plenary must be notified about this decision. In this context, the notification of the final judgment to the Plenary is constitutive for the loss of parliamentary membership.

5. Considering the provision of the second paragraph of Article 84 of the Constitution, it is clear that a parliamentary membership cannot be terminated without a finalised conviction, and any notification to the Plenary on this matter would have no legal effect. In short, the loss of a parliamentary membership depends on the existence of a finalised conviction for a crime that disqualifies the individual from being elected as a Member of Parliament.

*6.*On the other hand, the constitution grants the right to apply to the Constitutional Court against decisions related to the loss of parliamentary membership. In this context, Article 85 of the Constitution states that *“If the parliamentary immunity of a deputy has been lifted or if the loss of membership has been decided according to the first, third or fourth paragraphs of Article 84, the deputy in question or another deputy may, within seven days from the date of the decision of the Plenary, appeal to the Constitutional Court, for the decision to be annulled on the grounds that it is contrary to the Constitution, law or the Rules of Procedure. The Constitutional Court shall make the final decision on the appeal within fifteen days.”.*

7. First of all, it should be noted that for the Constitutional Court to examine the annulment request of a rule or action, it must be subject to review and fall within the Constitutional Court’s scope of authority. In this sense, the Constitutional Court does not limit itself to how the rule or action is labeled, named, or the method followed in its implementation; it also takes into account its legal nature, impact, and consequences (For similar rulings by the Constitutional Court, see: CC (Constitutional Court), E. 2023/113, K.2023/127, 26/7/2023; AYM, E.2007/51, K.2007/56, 15/5/2007; E.2007/62, K.2007/66, 5/7/2007).

8. In this case, the issue that the Constitutional Court must first assess is whether the action in question falls within the scope of the second paragraph of Article 84 of the Constitution. As stated above, for the loss of a Member of Parliament to be valid under the second paragraph of Article 84, there must be a finalised conviction. In this regard, it should be examined whether there is a finalised conviction associated with the action requested for annulment, and it should be determined whether an action that can be subject to review under Article 85 of the Constitution has legally come into existence.

9. Indeed, the Constitutional Court has first determined the nature of the action in cases where requests were made for the annulment of legislative actions regarding the loss of parliamentary membership due to the notification of a final judgment to the Plenary *under the second paragraph of Article 84 of the Constitution*. It concluded that it is not possible to conduct a constitutional review for the actions fall under the second paragraph of Article 84 within the framework of Article 85 of the Constitution. Consequently, it rejected annulment requests due to lack of jurisdiction (see

Constitutional Court, E.2021/33, K.2021/23, 31/3/2021; Constitutional Court, E.2020/49, K.2020/36, 25/6/2020; Constitutional Court, E.2020/50, K.2020/37, 25/6/2020).

10. However, in the present case, there is no finalised judgment regarding Hatay Member of Parliament Şerafettin Can ATALAY that could be read in the Plenary of the Grand National Assembly of Turkey (TBMM). In this respect, it should not be overlooked that the current annulment request pertains to an action that took place during the execution of the Constitutional Court's previous violation rulings. In none of the previous cases, where the Constitutional Court examined annulment requests against loss membership resulting from the reading of a finalised conviction, was there a violation ruling issued prior to the reading (see Constitutional Court, E.2021/33, K. 2021/23, 31/3/2021; Constitutional Court, E.2020/49, K.2020/36, 25/6/2020; Constitutional Court, E.2020/50, K.2020/37, 25/6/2020). In this respect, the present annulment request differs from previous cases, and in this sense, it is being presented to the Constitutional Court for the first time. Therefore, it is not possible for the Constitutional Court to assess the current annulment request independently from the violation rulings.

11. At this point, it is necessary to address the process leading up to and following the Constitutional Court's violation ruling. Şerafettin Can ATALAY, who was tried at the Istanbul 13th Assize Court, was sentenced to 18 years in prison on 25 April 2022 for the crime of attempting to overthrow the Government of the Republic of Turkey or to prevent it from fulfilling its duties, and it was decided that he be arrested upon the conviction. The appeal against this decision was also rejected by the Regional Court of Appeal with its decision dated 28 December 2022.

12. During the appeal process of the decision by the 3rd Criminal Chamber of the Court of Cassation, Şerafettin Can ATALAY was elected as a Member of Parliament for Hatay from the Workers' Party of Turkey in the 28th Parliamentary General Elections held on 14 May 2023, and received his certificate of election. Based on the fact that he had acquired parliamentary immunity upon his election, he requested from the Chamber, in accordance with Article 83 of the Constitution, that the proceedings be suspended and that he be released. However, this request was rejected by the Chamber with a decision dated 13 July 2023. The appeal against this decision made to the 4th Criminal Chamber of the Court of Cassation was also definitively rejected by a majority vote on 17 July 2023, on the grounds that the decision contained no errors, procedural faults, or violations of the law.

13. While the individual application to the Constitutional Court, filed on 20 July 2023 against the decision rejecting the request for suspension and release, was still under review, the Chamber, with its decision dated 28 September 2023, upheld the conviction. A copy of the finalised judgment was sent to the Grand National Assembly of Turkey (TBMM) for necessary action, in accordance with the second paragraph of Article 84 of the Constitution.

14. The Constitutional Court Plenary ruled on 25 October 2023 that Şerafettin Can ATALAY’s right to be elected, his right to engage in political activity, and his right to personal liberty and security had been violated (*Şerafettin Can Atalay (2)* [GA], App. No: 2023/53898, 25/10/2023). The Constitutional Court decided to send a copy of the ruling to the Istanbul 13th Assize Court for the elimination of the identified rights violations, including the commencement of a retrial, the suspension of the execution of the conviction, the provision of his release from the penal institution, and the issuance of a suspension order during the new trial.

15. On 30 October 2023, the president of the first instance court, to which the violation ruling had been sent, wrote a memorandum to the Chamber, stating that the Constitutional Court’s violation ruling was related to the decision of the Chamber to reject the request for a suspension order due to the plaintiff's election as a Member of Parliament. He further stated that the conviction had been upheld while the individual application was still under review, and that due to this new situation, it was necessary for the Chamber to make a new assessment.

16. The Chamber returned the case file, stating that the aforementioned request of the first instance court should be sent to the Court of Cassation by a decision made by the Court Panel, rather than through a memorandum. On 1 November 2023, the Istanbul 13th Assize Court unanimously decided, in an additional ruling, to send the case file to the Chamber based on the reasons mentioned in the said memorandum.

17. On 8 November 2023, the Chamber unanimously decided not to comply with the Constitutional Court's ruling, *stating that no legal value or validity could be attributed* to the violation ruling of the Constitutional Court and that there was no decision to be applied within the scope of Article 153 of the Constitution. The Chamber ruled that in the face of a finalised and enforceable conviction upheld during the individual application review process, actions should be initiated for the dismissal of the plaintiff's parliamentary membership due to the finalised conviction, and a copy of the decision should be sent to the Grand National Assembly of Turkey (TBMM) to begin the necessary procedures. Furthermore, it was unanimously decided to file a criminal complaint with the Chief Public Prosecutor’s Office of the Court of Cassation against the members of the Constitutional Court who voted in favour of the violation ruling, alleging that they violated constitutional provisions and exceeded their authority.

18. Regarding the objection to the aforementioned decision of the Chamber, the 4th Criminal Chamber of the Court of Cassation ruled on 20 November 2023, by a majority vote, that the decision in question was not a decision subject to objection under Article 267 of the Code of Criminal Procedure No. 5271, dated 4 December 2004, and decided that there was no need to make a ruling. An individual application was filed against this decision.

19. In its ruling on 21 December 2023 (*Şerafettin Can Atalay (3)* [GA], App. No: 2023/99744), the Constitutional Court Plenary determined that the applicant’s right to an individual application, his right to be elected and engage in political activity, and his

right to personal liberty and security were violated due to the failure to implement the violation ruling. The court decided to send a copy of the ruling to the Istanbul 13th Assize Court to ensure that the identified violations are eliminated, a retrial of the applicant be initiated, the execution of the conviction be suspended, the applicant be released from the penal institution, and a suspension order be issued during the retrial *(Şerafettin Can Atalay (3)* [GA], App. No: 2023/53898, 25/10/2023, § 77).

20. The first instance court, to which the violation ruling was sent, decided to send the file to the Chamber; on 3 January 2024 in its additional ruling dated 27 December 2023. the Chamber, based on the reasons in its decision dated 8 November 2023, unanimously decided not to comply with the Constitutional Court's ruling, and to send a copy of the decision to the Grand National Assembly of Turkey (TBMM) to initiate the procedures for the dismissal of the plaintiff's parliamentary membership due to his final conviction. At the 54th session of the Grand National Assembly of Turkey (TBMM) on 30 January 2024, it was announced that the procedures for the loss of the applicant's (plaintiff's) parliamentary membership had been initiated by the reading of the letter dated 3 January 2024 from the Chamber, numbered E.2023/12611, D. Is 2024/1, which stated that the decision had been attached.

21. It should first be noted that the additional ruling dated 27 December 23 from the Istanbul 13th Assize Court, which was presented to the Plenary at the 54th session of the Grand National Assembly of Turkey (TBMM) on 30 January 2024, is not a conviction decision. It is a decision to send the file to the Chamber for evaluation of the Constitutional Court's individual application ruling dated 21 December 2023.

22. On the other hand, it is legally impossible mention the existence of a finalised judgment concerning Hatay Member of Parliament Şerafettin Can ATALAY following the Constitutional Court's violation ruling on 25 October 2023. After the violation ruling, as stated in the operative part of the decision, it is a constitutional obligation to annul the decision that caused the violation. No judicial authority, including the courts, nor any public authority can justify their actions on a judicial decision that has been found to violate the Constitution, and no legally binding validity can be attributed to a decision that has been determined to be unconstitutional. The Constitutional Court's violation rulings are not merely advisory or recommendatory; they are binding decisions that leave no discretion to the relevant authorities regarding their implementation. In this context, the lower courts have no discretion to maintain a previous decision that the Constitutional Court has identified as the source of the violation (see *Mehmet Doğan* [GA], App. No: 2014/8875, 7/6/2018, § 59). Not only the courts but also other public authorities that played an active role in causing the violation or in the process of remedying the violation are obligated to implement the requirements of the violation ruling, to rectify the violation, and to prevent its continuation.

23. In this respect, it is undeniable that the legislative body is also part of the process of remedying the violation identified by the Constitutional Court Plenary on 25 October 2023, and the decision in question is binding on the legislative body as well. Indeed, the Constitutional Court, within the scope of remedying the violation issued upon the

second application of Hatay Member of Parliament Şerafettin Can ATALAY, ruled that a copy of the decision be sent to the *Grand National Assembly of Turkey (TBMM)* for information and due to its relevance (*Şerafettin Can Atalay* (3), § 78).

24. On the other hand, the failure of the lower courts to implement the Constitutional Court's ruling does not change this constitutional obligation and reality. It is not legally possible to attribute any value to the Court of Cassation's *decision not to comply with the Constitutional Court's ruling* on the violation, nor is it possible to accept that a finalized conviction continues to exist based on the Court of Cassation's decision.

25. The decision of the Chamber dated 3 January 2024 and numbered D.Is2024/1, which was included in the text read at the Grand National Assembly of Turkey (TBMM) Plenary, is a decision that cannot be issued under Turkish law, is completely outside the scope of the Constitution, and has no legal basis. Therefore, the reading of the Chamber's letter at the TBMM Plenary clearly does not contain a finalised conviction regarding Hatay Member of Parliament Şerafettin Can ATALAY, a process was initiated for the loss of Hatay Member of Parliament Şerafettin Can ATALAY, thus creating a *de facto situation*.

26. It is not possible to analyse the *de facto situation* created by the reading of the Chamber's letter at the Grand National Assembly of Turkey (TBMM) Plenary as a legislative act falling within the scope of the second paragraph of Article 84 of the Constitution which is the subject of the annulment request. As a result, since it is legally impossible to speak of the existence of a finalised judgment concerning Hatay Member of Parliament Şerafettin Can ATALAY following the Constitutional Court's decision numbered 2023/53898, dated 25 October 2023, it is not possible for the Constitutional Court to rule on the *de facto* situation created by the reading of the letter dated 3 January 2024 from the 3rd Criminal Chamber of the Court of Cassation, numbered E. 2023/12611, to the Plenary at the 54th session of the Grand National Assembly of Turkey (TBMM) on 30 January 2024.

27. Indeed, the Constitutional Court has, on multiple occasions, ruled that there is no need to make a decision regarding the requests brought before it, both in the context of norm control and in D. Is cases, for various reasons.

28. When an annulment request is made regarding norms that the Constitutional Court has previously reviewed and found unconstitutional, the Court has ruled that there is no need to make a decision on the grounds that it had already ruled on the matter and that there was no longer any subject of the application (see CC, E.2023/82, K.2023/77, 4/5/2023; CC, E.2023/50, K.2023/157, 28/9/2023).

29. On the other hand, the Constitutional Court has ruled that there is no need to make a decision regarding annulment requests related to the constitutionality of the titles of the articles of laws, on the grounds that these titles, in themselves, have no meaning and do not have the quality of a norm, and thus cannot be the subject of an annulment

case (CC, E.2013/95, K.2014/176, 13/11/2014; CC, E.2014/146, K.2015/31, 19/3/2015).

30. Similarly, in its ruling on the request for a precautionary suspension based on the claim that a phrase in the name of a political party was used as the name of an alliance formed by some political parties, leading to confusion, the Constitutional Court examined whether such an alliance legally existed. In its examination, the Constitutional Court determined that the alliance name had not gained legal existence and thus found the issue non-reviewable, deciding that there was no need for further examination of the request. As a result of this review, the Constitutional Court ruled that *it was not possible to examine an application concerning an entity that did not legally exist, and therefore, decided that there was no need to make a decision on the request* (see CC, E.2022/3 (D. Is), K.2022/2, 1/6/2022, §§ 8-9).

31. Regarding the current request as well, taking into account the details provided above (see §§ 10-26), it is not possible to examine the request concerning an action that does not legally exist.

32. For the reasons explained, it must be decided that there is no need to make a decision regarding the request for the annulment of the dismissal of Hatay Member of Parliament Şerafettin Can ATALAY from his parliamentary position, which was based on the reading of the letter from the Presidency of the 3rd Criminal Chamber of the Court of Cassation dated 3 January 2024 and numbered E.2023/12611, D. Is 2024/1, at the 54th session of the Grand National Assembly of Turkey (TBMM) on 30 January 2024 in accordance with Article 85 of the Constitution and that the dismissal is null and void.

Kadir ÖZKAYA, İrfan FİDAN, Muhterem İNCE, and Yılmaz AKÇİL did not agree with this opinion.

IV. Request for Suspension of Enforcement

33. In summary, the application requests the suspension of the enforcement of the action, stating that irreparable or difficult-to-remedy damages may occur if it is implemented.

Since it was decided with the decision dated 22 February 2024 and numbered E. 2024/43, K.2024/65 that there was no need to make a ruling on the determination that the dismissal of Hatay Member of Parliament Şerafettin Can ATALAY from his parliamentary position, based on the reading of the letter from the Presidency of the 3rd Criminal Chamber of the Court of Cassation dated 3 January 2024 and numbered E. 2023/12611, D. Is 2024/1, at the 54th session of the Grand National Assembly of Turkey (TBMM) on 30 January 2024, was null and void. It was UNANIMOUSLY decided on 22 February 2024 that THERE WAS NO NEED TO MAKE A RULING on the request for the suspension of the enforcement of this determination.

V. RULING

The decision was made on 22 February 2024, with dissenting opinions from Kadir ÖZKAYA, İrfan FİDAN, Muhterem İNCE, and Yılmaz AKÇİL, by a MAJORITY VOTE, stating that there is NO NEED FOR A DECISION regarding the request for the determination that the dismissal of Hatay MP Şerafettin Can ATALAY from his parliamentary position is null and void and for its annulment under Article 85 of the Constitution, following the reading of the letter at the 54th session of the Grand National Assembly of Turkey on 30 January 2024 from the Presidency of the Chamber, and related to the decision of the 3rd Criminal Chamber of the Court of Cassation, dated 3/ January 2024, numbered E.2023/12611, D. Is. 2024/1.

President
Zühtü ARSLAN

Vice President
Hasan Tahsin GÖKCAN

Vice President
Kadir ÖZKAYA

Member
Engin Yıldırım

Member
M. Emin KUZ

Member
Rıdvan GÜLEÇ

Member
Yusuf Şevki HAKYEMEZ

Member
Yıldız SEFERİNOĞLU

Member
Selehaddin MENTEŞ

Member
Basri BAĞCI

Member
İrfan FİDAN

Member
Kenan YAŞAR

Member
Muhterem İNCE

Member
Yılmaz AKÇİL

Dissenting Opinion Justification

1. We do not agree with the majority'' decision that there is no need for a ruling, as we believe the request for the determination that the dismissal of Hatay MP Şerafettin Can ATALAY from his parliamentary position is null and void, and for its annulment under Article 85 of the Constitution, following the reading of the letter from the Presidency of the 3rd Criminal Chamber of the Court of Cassation dated 3 January 2024, numbered E.2023/12611, D. Is. 2024/1, at the 54th session of the Grand National Assembly of Turkey (TBMM) on 30/1/2024. Instead, it should have been rejected due to lack of jurisdiction for the reasons outlined below.

2. It is necessary to first examine and consider the historical background of the relevant Constitutional provisions, the amendments in these provisions, and the legislative processes related to them regarding the decision to be made on this annulment request.

3. Before the 1995 Constitutional amendment, Article 84 of the Constitution required a decision by the Grand National Assembly of Turkey (TBMM) for all cases of dismissal, including cases of final conviction. Article 85, on the other hand, provided the possibility to apply to the Constitutional Court for the annulment of all dismissal decisions. With the amendment made to Article 84 as part of the Constitutional change, the procedure for requiring a TBMM decision regarding the dismissal of a parliamentary membership in the event of "*final conviction or restriction*" was abolished, and instead, the procedure of "*notifying the Plenary of the final court decision on this matter*" was introduced.

4. In other words, in the original version of Article 84 of the Constitution, a decision by the TBMM was required for the termination of membership in all cases stipulated in the first paragraph of the article, including the case of final conviction. In the original version of Article 85, the possibility of applying to the Constitutional Court for annulment of all dismissal decisions was also provided.

5. With the Constitutional amendment made by Law No. 4121, dated 23 July 1995, Article 84 was revised. It stipulated that for the dismissal of parliamentary membership due to resignation, insistence on continuing a duty or service incompatible with being an MP, or failure to attend five assembly sessions within a month without excuse or permission, a decision would be required from the TBMM Plenary. However, in the second paragraph of the article, the procedure for a TBMM decision regarding the dismissal of

parliamentary membership in cases of "*final conviction or restriction*" was abolished, and it was stated that the dismissal would occur "*upon notification of the final court decision on this matter to the Plenary.*"

6. In the bill proposing the amendment to Article 85 of the Constitution under Law No. 4121, it was foreseen that in cases where a decision was made by the Assembly to lift legislative immunity or to dismiss membership, or where the matter of dismissal was submitted to the Plenary, an application could be made to the Constitutional Court for annulment. Therefore, despite the distinction made in the reasons for dismissal in terms of the procedure for the loss of parliamentary membership under the amendment to Article 84, the bill proposing the amendment to Article 85 also included the "*submission of the matter of dismissal to Plenary*" as a case where an annulment lawsuit could be filed.

7. However, the provision proposed in the bill was not accepted by the Constitutional Commission during the legislative process. In the text accepted by the Constitutional Commission, it was only foreseen that an application for annulment could be made to the Constitutional Court "*in cases where a decision was made to lift legislative immunity or to dismiss parliamentary membership according to the first, third, or fourth paragraphs of Article 84*.".Therefore, contrary to what was included in the bill, this opportunity was not provided for the second paragraph of Article 84, which regulates the dismissal of parliamentary membership in cases of *final conviction or restriction*.

8. In the Constitutional Commission Report on this matter, the following explanation was provided: *"(…) The bill opens the possibility for the annulment by the Constitutional Court of all legislative acts resulting in the dismissal of parliamentary membership, just as in the current text. Although the bill adopts the principle that no decision should be made by the Assembly in cases of restriction or final conviction for a crime incompatible with parliamentary membership, it accepts the view that the act of notifying the Plenary about the dismissal in these cases could be subject to annulment by the Constitutional Court. Our Commission does not share this view. (…) For these reasons, our Commission has adopted the annulment request against Assembly decisions that result in the dismissal of parliamentary membership and has rejected the possibility of applying to the Constitutional Court for annulment against restriction decisions and final convictions that the Assembly is only informed about. (…)"* This point was clearly expressed in the report. The part of the text accepted by the Constitutional Commission was adopted as is in the Plenary discussions, and Article 85 of the Constitution was amended to read as follows: *"In cases where a decision has been made to lift legislative immunity or to terminate parliamentary membership in accordance with the first, third, or fourth paragraphs of Article 84, the relevant*

MP or another MP may apply to the Constitutional Court within seven days from the date the Plenary decision was made, claiming that the decision is in violation of the Constitution, law, or internal regulations. The Constitutional Court shall issue a final decision on the annulment request within fifteen days."

9. In conclusion, according to the current Constitutional provisions, the cases that result in or may result in the loss of parliamentary membership are separately regulated in four paragraphs of Article 84 of the Constitution. Article 85, on the other hand, specifies that an annulment request can only be made to the Constitutional Court in cases where the loss of parliamentary membership has been decided according to the *first, third, and fourth* paragraphs. This is because a decision by the TBMM Plenary is required for the loss of parliamentary membership in the situations regulated in those paragraphs (such as resignation, insistence on continuing a duty or service incompatible with parliamentary membership, or failure to attend assembly sessions without excuse or permission). However, in the case of final conviction or restriction regulated in the second paragraph, no decision by the Plenary is required for the dismissal of parliamentary membership. It is sufficient to fulfil the procedure by notifying the Plenary about the final conviction of the relevant MP.

10. Therefore, the grounds for the loss of parliamentary membership, which allow for an application to the Constitutional Court for annulment under Article 85 of the Constitution, and which the Constitutional Court has the authority and responsibility to review, are the situations specified in the first, third, and fourth paragraphs of Article 84 of the Constitution. However, there is no opportunity to apply to the Constitutional Court under Article 85 for situations regulated in the second paragraph of Article 84, which concerns the loss of parliamentary membership due to final conviction or restriction. (see CC, E. 2021/33, K.2021/23, 31/3/2021, § 7; E.2020/49, K.2020/36, 25/6/2020, § 7; E. 2020/50, K.2020/37, 25/6/2020, § 7).

11. Therefore, the loss of parliamentary membership based on final conviction or restriction, which occurs by notifying the Plenary of the final court decision, as regulated by the second paragraph of Article 84 of the Constitution, falls outside the scope of Article 85 of the Constitution and, consequently, outside the review authority and jurisdiction of the Constitutional Court (see CC, E. 2021/33, K.2021/23, 31/3/2021, § 8; E.2020/49, K.2020/36, 25/6/2020, § 8; E. 2020/50, K.2020/37, 25/6/2020, § 8).

12. In the context of the situations mentioned, it is understood that the Constitutional Court's ability to review the current application is only possible if it is determined that one of the grounds for termination, which allows for an annulment application under under Article 85 of the Constitution exists in the specific case.

13. Indeed, for the Constitutional Court to review a rule or act whose annulment is requested, the rule or act in question must be subject to oversight and fall within the Court's scope of review according to the precedent referenced in the majority opinion,. In this sense, the Constitutional Court does not limit itself to how the rule or act is characterized, named, or the procedure followed in making it; it also considers its legal nature, effect, and consequences (see CC, E.2023/113, K.2023/127, 26/7/2023; CC, E.2007/51, K.2007/56, 15/5/2007; CC, E.2007/62, K.2007/66, 5/7/2007). According to this precedent, for the Court to conduct a review—whether explicitly or according to the Constitutional Court's interpretation—the existence of one of the dismissal cases regulated in the *first, third, or fourth* paragraphs of Article 84 of the Constitution, for which an annulment application is allowed under Article 85, is required. If none of these cases are present, a dismissal decision due to lack of jurisdiction is mandatory.

14. As mentioned above, the first paragraph of Article 84 of the Constitution regulates dismissal due to resignation, the third paragraph regulates dismissal for insisting on continuing a duty or service incompatible with parliamentary membership, and the fourth paragraph regulates dismissal for failing to attend parliamentary sessions without excuse or permission. In the present case, the loss of parliamentary membership does not fall under any of the reasons listed in the first, third, or fourth paragraphs of Article 84, which could be subject to an annulment request under Article 85 of the Constitution. The annulment request pertains to a reason for dismissal that is beyond the Constitutional Court's authority and scope of review. Therefore, in line with the Court's usual practice (see CC, E.2021/33, K.2021/23, 31/3/2021; CC, E. 2020/49, K.2020/36, 25/6/2020; CC, E.2020/50, K.2020/37, 25/6/2020), a dismissal decision due to lack of jurisdiction must be issued in this case.

15. In the decision based on the opinion of the majority of our Court, there is no acknowledgment that one of the cases allowing an application to the Constitutional Court under Article 85 of the Constitution exists in the specific application. Given this, the majority of our Court should have reached a conclusion, as previously mentioned, by evaluating whether the action subject to the application falls under one of the dismissal cases within the Constitutional Court's jurisdiction. However, the majority of our Court has reached a conclusion by evaluating whether the dismissal of parliamentary membership due to final conviction, regulated in the second paragraph of Article 84 of the Constitution, is a case falling under the Constitutional Court's jurisdiction, despite it being clearly established in the Constitutional text that such a case is outside the Court's authority.

16. In the case of the present application, resorting to such an evaluation method is neither legally possible nor meaningful. This is because the key issue the Constitutional Court must assess in any case is whether the matter falls under one of the cases that the Court is authorized to review under Article 85 of the Constitution (or Article 150 in terms of claims of de facto internal regulation changes). For the Constitutional Court to examine the annulment request and assess the legality of the contested act, the application must first concern a matter within the Court's jurisdiction to review claims of legal violation. This is a necessity. It is clear that under Articles 84 and 85 of the Constitution, the Constitutional Court is not granted this authority with respect to the annulment request being examined. Whether the Constitutional Court issued a violation ruling before or after the reading process in the TBMM Plenary does not change this outcome.

17. It should also be noted that even if it were determined that an action was taken under the second paragraph of Article 84 of the Constitution in this case, the merits of the application still could not be reviewed. This is because Article 85 of the Constitution clearly does not allow for an annulment application concerning this type of dismissal. Therefore, the majority is assessing whether a termination, over which it has no authority to review, actually exists or not.

18. Another issue that needs to be assessed is that the decision based on the majority opinion examines whether the legislative action in question, which is the subject of the present application, contains the constitutive elements specified in the second paragraph of Article 85 of the Constitution. By conducting this review, the majority is effectively making a substantive judgment on a dismissal case that, under the clear provisions of the Constitution, cannot be reviewed by the Constitutional Court. Ultimately, the majority concludes that the action does not produce legal consequences and determines that it lacks constitutive elements, considering it a factual situation.

19. In other words, the majority finds the action legally invalid on substantive grounds but does not annul it due to a lack of authority under Article 85 of the Constitution, resulting in a decision of no need to rule.

20. However, what is important at this stage, with respect to the specific application, is not whether the action is legally invalid, as the majority opinion suggests, but whether our Court has the authority to review the claim of legal invalidity on its merits. As explained above, it is clear that this authority has not been granted to the Constitutional Court.

21. In conclusion, we believe that the majority of our Court has established a meaningless method of review by assessing whether the constitutive elements of a dismissal case, over which it lacks jurisdiction, are present. Furthermore, it has conducted a substantive review in a matter where it clearly does not have authority, resulting in a meaningless outcome.

22. Additionally, in our view, the examples cited in the majority opinion, where the Constitutional Court concluded with “no need for a ruling” are not comparable to the present application.

23. Given this, during the 54th session of the Grand National Assembly of Turkey on 30/1/2024, following the reading of the letter from the Presidency of the 3rd Criminal Chamber of the Court of Cassation, dated 3 January 2024, and numbered E.2023/12611, D. Is. 2024/1, stating that the decision was attached, it is necessary to issue a dismissal decision due to lack of jurisdiction regarding the request for the determination that the loss of Hatay MP Şerafettin Can ATALAY from his parliamentary position is null and void and for its annulment under Article 85 of the Constitution.

24. For the reasons explained, since it has been concluded that the requests for the determination of nullity and annulment must be dismissed due to lack of jurisdiction, we do not agree with the decision that there is no need for a ruling.

Vice President Kadir Özkaya	Member İrfan Fidan
Member Muhterem İnce	Member Yılmaz Akçil