

TO THE PRESIDENCY OF THE GRAND NATIONAL ASSEMBLY OF TURKEY

02 August 2024

APPLICANT : Erkan Bař
(TİP Chairperson – İstanbul Deputy)
Atatürk Bulvarı TBMM Bakanlıklar/Ankara

SUBJECT : Request for the registratin of the deputyship and establishment of personal and financial rights of Şerafettin Can Atalay in accordance with the decision of the Constitutional Court numbered E2024/43 , K2024/65 dated 22 February 2024, and published in the Official Gazette on 1 August 2024, which states that the procedure of the termination of the deputyship of Şerafettin Can Atalay during the 30 January 2024 session of the 28th Term, 2nd Legislative Year, 54th Assembly of the Grand National Assembly of Turkey is NULL AND VOID.

EXPLANATIONS :

A) Şerafettin Can Atalay was elected as a Member of Parliament from Hatay Province representing the Workers' Party of Turkey (TİP) in the 28th Term General Elections held on 14 May 2023. The decision of the Supreme Election Council (YSK) was published in the Official Gazette. On 25May 2023, the Hatay Provincial Election Board issued his deputyship certificate.

B) During the 30 January 2024 session of the 28th Term, 2nd Legislative Year, 54th Assembly of the Grand National Assembly of Turkey, the supplementary decision dated 27.12.2023 with file number E2021/178 and K2022/178 of the İstanbul 13th Assize Court and the decision of the 3rd Criminal Chamber of the Court of Cassation dated 3 January 2024 with file number E2023/12611 and D.Is2024/1 attached to the letter signed by the President of the 3rd Criminal Chamber of the Court of Cassation was read in the General Assembly and the Deputy Speaker of the Assembly, Bekir Bozdağ, announced that “the deputyship of Hatay Deputy Şerafettin Can Atalay has been terminated.”

C) Applications have been made to the Constitutional Court for the determination and cancellation of the aforementioned procedure as null and void. The Constitutional Court's E2024/43, K2024/65, 22 February 2024 dated decision regarding these applications states:

“10. However, in the present case, there cannot be a finalized ruling concerning Hatay Deputy Şerafettin Can Atalay that can be read in the TBMM General

Assembly. In this context, the request for annulment should not be overlooked as it concerns a procedure that took place during the enforcement of previously issued violation decisions by the Constitutional Court. In previous cases involving annulment requests against procedures resulting from the reading of finalised conviction decisions examined by the Constitutional Court., there was no violation decision issued before the reading procedure.

22. On the other hand, after the Constitutional Court's decision dated 25 October 2023, it is legally impossible to state that there is a finalized ruling concerning Hatay Deputy Şerafettin Can Atalay. After the Constitutional Court's violation decision, it is a constitutional obligation to eliminate the decision that caused the violation, as specified in the judgment of the decision. No public authority, including courts, can accept a judicial decision identified by the Constitutional Court as violating the Constitution as a basis, and a decision proven to be unconstitutional cannot be legally valid. Decisions of the Constitutional Court are binding and do not leave discretion to the relevant authorities regarding compliance. In this context, lower courts have no discretion to annul the previous decision identified by the Constitutional Court as the source of the violation.

24. Furthermore, the fact that lower courts have not implemented the Constitutional Court's decision does not alter this constitutional requirement and reality. It is not legally possible to attribute legal value to the Court of Cassation's decision not to comply with the Constitutional Court's decision, nor is it possible to accept that a finalized conviction decision continues to exist based on this decision.

25. The decision of the Chamber dated 03 January 2024 with file number D.Is2024/1, mentioned in the text read in the TBMM General Assembly, is also a decision that is not permissible under Turkish law, completely outside the Constitution, and lacks legal basis. Therefore, by reading the letter of the Chamber, containing decisions that clearly do not involve a finalized conviction concerning Hatay Deputy Şerafettin Can Atalay in the TBMM General Assembly, a procedure has been carried out to terminate 'Şerafettin Can Atalays deputyship and thus created a de facto situation.

26. It is not possible to evaluate this de facto situation created by the reading of the letter from the Chamber as a legislative act within the scope of Article 84, second paragraph, of the Constitution. Consequently, since it is legally impossible to refer to a finalized ruling concerning Hatay Deputy Şerafettin Can Atalay following the Constitutional Court's decision numbered 2023/53898 dated 25 October 2023, the Constitutional Court cannot make a decision concerning the de facto situation created by the reading the 03 January 2024 dated and E.2023/12611 numbered letter from the 3rd Criminal Chamber of the Court of Cassation in the 54th session of the Grand National Assembly of Turkey held on 30.01.2024

31.Regarding the present request – considering the explanations above – there is no possibility of examining the request related to a legally .existent procedure-non

32.For the reasons explained, it must be decided that, in the 54th session of the Grand National Assembly of Turkey held on 30 January 2024, the reading of the letter from the Chamber indicating that the decision of the 3rd Criminal Chamber of the Court of Cassation dated 03.01.2024 with file number E.2023/12611 and D.Is 2024/1, was sent as an annex, establishes that the termination of Hatay Deputy 'Şerafettin Can Atalays deputyship is null and void. Additionally, it should be decided that there is no need to make a decision regarding the request for annulment pursuant to Article 85 of the Constitution.

(D) The Constitutional Court's decision explicitly and clearly states that the conviction decision concerning Can Atalay has not legally final, and therefore, his deputyship cannot be revoked. Additionally, it is noted that the decision read in the Assembly was not a criminal decision regarding him but rather a decision about not complying with the Constitutional Court's violation decision. The same decision also emphasizes that Constitutional Court decisions are binding and mandatory for all courts and institutions.

(E) Despite the absence of a final ruling, it has been determined that the procedure for the termination of 'Şerafettin Can Atalays deputyship, through reading the court decision, is NULL AND VOID. Considering that the Constitutional Court's decision is binding on the Grand National Assembly of Turkey under Article 138 of the Constitution, it is a constitutional obligation to register Şerafettin Can Atalay as a deputy and establish his personal and financial rights without requiring any further action.

RESULT AND REQUEST : We request the registration of Şerafettin Can Atalay as a deputy and the establishment of his personal and financial rights in accordance with the decision of the Constitutional Court numbered E2024/43, K2024/65, dated 22.02.2024 and published in the Official Gazette on 01.08.2024 which states that the procedure for the termination of Şerafettin Can Atalay's deputyship during the 30.01.2024 session of the 28th Term, 2nd Legislative Year, 54th Assembly of the Grand National Assembly of Turkey is NULL AND VOID.

Erkan Baş
(TİP Chairperson – Istanbul Deputy)

Attachment: Decision of the Constitutional Court numbered E2024/43, K2024/65, dated 22.02.2024 and published in the Official Gazette on 01 August 2024.