

NOTE
ON THE SALARY OF THREE JUDGES IN THE DIKA COURT

1. At which date exactly is a judge deemed appointed in the Dika Court? That day is very important to know and should be clearly specified according to law since it is the first day when the judge can sit or is otherwise empowered to make validly any acts concerning his position of judge, and to draw his new salary.

That day, according to law might be: the day when the State Council passes the resolution to appoint the judge; - or the day when the Assembly is notified (without objection) of the resolution of the State Council; - or the day of the signature of the king; - or the day of proclamation of the appointment in the Government Gazette; - or any day fixed retrospectively in the proclamation made in the Government Gazette (as it has been made in that case).

As an answer to that question, it seems that the ministry of justice considers obviously that the day of appointment is the day fixed retrospectively in the proclamation of appointment made in the Government Gazette, and that the ministry of Finance raises no objection to that policy. Since both Ministries agree, let us take the day of appointment of the three judges. at the Dika Court to be the 1st. April B.E.2478.

2. The new Judicial Service Act has been published for enforcement in the Government Gazette of the 30th. April B.E.2478: but with retrospective effect on the 1st. April B.E.2478.

3. If the day of appointment is the 1st. April B.E.2478, the appointment of the three judges and the other questions concerning their transfer in a new position is governed by the new Judicial Service Act, because that Act has been (retrospectively) the law in force on the 1st. April B.E.2478.(To give an obvious instance; it is clear that if a judge were appointed to the Dika Court on 1st. April with a salary of Tcs.1000, his salary should unquestionably be reduced since no salary in the Dika Court should exceed 900 tcs. according to the new Act having retrospective effect).

4. Any construction which would try and avoid the consequences of the retrospective effect of the new Act up to the 1st. April included, especially as explained in No.3 hereabove, should be very weak and liable to strong criticisms.

5. On the other hand the salary of a judge at the Dika Court having been fixed by the new Act to be not less than Tcs.650 and not more than Tcs. 900 (Sect.27 and Schedule), it follows that the decision of the Minister to fix the salary of the new judges to Tcs.800 (on the 1st. April) is not and has never been illegal, since it is included between the minimum and maximum salary possible (650 to 900).

6. But it should be very weak to say that the decision of the Minister, although quite legal, theoretically cannot be affected by the retrospective effect of the new Act, because it is just the consequence of a retrospective effect to modify back positions even perfectly legal.

7. Again it should be very weak to rely upon the principle of civil law that a change of rule cannot affect the private rights which has been acquired previously, and that such rights must remain governed by the old law. The difficulty in the present case being that there was no old law fixing the salary at Tcs.800, likely to balance the new one. There was only a resolution of the State Council. and it

appears from the letter of the Secretary-General of the State Council dated 14th. August B.E.2477 (No.၈၂ 4124/2477) that the decision was only a temporary one, to be in force pending the time during which the new judicial Act would not have been proclaimed as a law in the Government Gazette.

8. If it is admitted that it should be undesirable to reduce the salary once fixed for the three Judges of the Dika Court in conditions which they were well entitled to take as quite sound and final, it seems that the legal position should be much stronger if relying upon the following arguments;

a) the fact that the decision of the Minister as to the fixation of the salary was unquestionably a legal one;

b) the fact that the amount of Tcs. 800 itself remains a legal amount after the publication of the new Act;

c) that the Minister of Justice, when he appoints a judge to the Dika Court, is not forbidden by the new Act to grant him (with the sanction of the Ministry of Finance) a salary which is not necessarily the minimum salary fixed by the law, but which may be as from the beginning any salary possible between the minimum and the maximum fixed by the law.

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