REPUBLIC OF TURKEY

CONSTITUTIONAL COURT

SECOND SECTION

DECISION

Application No: 2012/521

Date of Decision: 2/7/2013

SECOND SECTION

DECISION

President	: Alparslan ALTAN
Members	: Recep KÖMÜRCÜ
	Celal Mümtaz AKINCI
	Muammer TOPAL
	M. Emin KUZ
Rapporteur	: Mustafa BAYSAL
Applicant	: Burak DÖNER
Counsel	: Att. Halit KARABUL

I. SUBJECT OF APPLICATION

1. The applicant has asserted that his detention became contrary to law due to the fact that it exceeded the maximum limit that is set forth in the Code and thus his right to liberty and security was violated.

II. APPLICATION PROCESS

2. The application was directly lodged to the Constitutional Court on 8/11/2012. As a result of the preliminary administrative examination of the petition and its annexes, it has been determined that there is no deficiency to prevent the submission thereof to the Commission.

3. It was decided on 25/12/2012 by the Second Commission of the Second Section that, since it was deemed necessary to make a principle decision by the Section in order to make a decision in relation to the application, the admissibility examination be carried out by the Section, that the file be sent to the Section as per paragraph (3) of article 33 of the Internal Regulation of the Constitutional Court.

4. In the session held on 12/2/2013, the Section decided that the examination of admissibility and merits of the application be carried out together as per sub-paragraph (b) of paragraph (1) of article 28 of the Internal Regulation.

5. The facts and cases which are the subject matter of the application were notified to the Ministry of Justice on 12/2/2013. The Ministry of Justice presented its opinion to the Constitutional Court on 16/4/2013.

6. The opinion presented by the Ministry of Justice to the Constitutional Court was notified to the applicant on 8/5/2013. The applicant presented what she would say to the Constitutional Court within due period.

III. FACTS AND CASES

A. Facts

7. The facts as included in the application petition and the documents that are provided by the Court which heard the case are summarized as follows:

8. The applicant was detained by the 1st Criminal Court of Peace of Zeytinburnu on the date of 7/1/2007.

9. A court case was filed by the Office of the Chief Public Prosecutor of İstanbul against the applicant through the indictment dated 1/6/2007 with the request that the applicant be penalized for the crimes of willful murder, establishing an organization with the intent to commit crimes, plunder with the intent to derive benefits for the criminal organization and damaging property. The trial was held at the 12th Assize Court of İstanbul.

10. The application that was lodged at the Court with the petition dated 25/9/2012 on the request that the state of detention be ended was rejected with the decision dated 17/10/2012. It is seen that the justification includes the statements, *"…in the present case, although it is understood that writs of detention as many as the number of defendants were issued about the defendant, the detention of whom was decided for the crimes of 'opposition to the Code numbered 6136 and aiding and abetting an armed organization by (procuring arms and hiding the arms that are used in criminal activities)' which fall within the competence of the court, it is also understood from the contents of article 101 of the Code of Criminal Procedure that it is obligatory to submit for execution separately for each crime in the relevant writs of detention for the crimes that are stated in the writ of detention for which a decision of detention is made, that the court obeys the five-year detention period separately in terms of each crime that is stated in the decision of detention for each of these crimes falling within the competence of assize courts due to the said reasons… it is required to evaluate more than one crime falling within the competence of assize courts at one single court due to connection and to evaluate the states of detention that are executed in connection with a single writ of detention separately for each crime…".*

11. Upon objection, 13th Assize Court rejected the objection on the same date. It is stated in the justification for rejection *that more than one crime committed all have independent natures, that the period in paragraph number (2) of article 102 of the CCP needs to be evaluated separately for each crime, that the purpose of the lawmaker is also in this direction, that the applicant was detained for the crimes of becoming a member of a terrorist organization in order to commit a crime as stated in sub-paragrapha) of paragraph number (3) of article 100 of the CCP, murder, opposition to the Code numbered 6136, shooting in a way to inflict fear, concern and panic, that the maximum period of five years in relation to detention needs to be evaluated separately for each categorical crime.., that the suspicion of escape of the accused continues when the fact that these crimes are among catalogue crimes and the punishment set forth and the evidence in the file are considered, that other protection measures may remain insufficient, that, therefore, there is no contrariety to procedure and code in the decision.*

12. 12th Assize Court of İstanbul which heard the case decided with its decision dated 4/4/2013 and numbered M. 2011/89, D. 2013/80 that the applicant be eventually penalized with an approximate imprisonment of 58 years 9 months as per articles 220/1, 220/5 (6 times), 106/1-d of the Turkish Criminal Code dated 26/9/2004 and numbered 5237 and as per article 13/1 of the Code numbered 6136.

13. It has also been decided in the decision that, considering the conviction of the applicant due to other crimes, the applicant be detained separately as per article 100 and consecutive articles of the Code of Criminal Procedure dated 4/12/2004 and numbered 5271 due to his establishing and leading a criminal organization and his acts of attempted murder towards the complainants O.T., H.Ç., B.Ç., G.Ç. and N.S., that separate writs of detention be issued about him for each crime.

14. The case about the applicant is in the phase of appeal.

B. Relevant Law

15. Articles 8 and 9 of the Code of Criminal Procedure dated 4/12/2004 and numbered 5271 are as follows:

"The concept of connection

Article 8 *- (1) Connection shall be considered to exist if a person is the accused of more than one crime or when there is more than one accused with any which title in a crime.*

(2) The acts of patronage of the criminal after the commission of the crime, destroying, concealing or altering the corpus delicti shall also be considered as connected crime.

Lodging cases by way of consolidation

Article 9 *- (1) If each of the connected crimes falls under the competence of different courts, a case in relation to these can be filed at the court of higher competence by way of consolidation."*

16. Paragraph (2) of article 102 of the same Code is as follows:

"The period of detention in casework that falls under the competence of an assize court shall be two years at most. In cases of vis majors, this period may be extended by showing the justification thereof; the period of extension shall not exceed three years in total."

17. Paragraph (1) of article 104 of the same Code is as follows:

"The suspect or the accused may request to be released at any phase of the investigation and prosecution stages."

18. Sub-paragraph(a) and (d) of paragraph number (1) of and the last sentence of article 141 of the said Code are as follows:

"Request for compensation
Article 141 *- (1) During the investigation or prosecution of a crime, the persons;*
a) Who have been arrested, detained or about whom the continuation of detention has been ruled except for the conditions stipulated in the codes,
…
d) Who have not been brought before the judicial authority in a reasonable period of time and a judgment has not been rendered about him/her in this period despite having been detained in accordance with the code,

…

Can claim all kinds of material and moral damages from the State."

19. Paragraph (1) of article 142 of the said Code is as follows:

"A request for compensation may be filed within three months following the notification of the finalization of decisions or judgments to the concerned and, in any case, within a year following the date of finalization of the decisions or judgments."

IV. EXAMINATION AND JUSTIFICATION

20. The individual application of the applicant dated 8/11/2012 and numbered 2012/521 was examined during the session held by the court on 2/7/2013 and the following were ordered and adjudged:

A. Claims of the Applicant

21. The applicant has asserted that his right that is stated in article 19 of the Constitution and article 5 of the European Convention on Human Rights was violated due to the fact that the period of detention in the Code numbered 5271 was exceeded and the state of detention thus became contrary to law, that this situation did not accord with the principles of equality and fair trial and requested the revocation of the decisions in relation to detention and of the writ of the General Penal Assembly of the Supreme Court of Appeals dated 12/4/2011 and numbered M. 2011/1-51, D. 2011/42 that set the foundation for such decisions.

B. Evaluation

22. In clause three of article 148 of the Constitution and clause numbered (1) of article 45 of the Code on the Establishment and Rules of Procedures of the Constitutional Court numbered 6216, the provision that anyone can apply to the Constitutional Court based on the claim that out of their fundamental rights and freedoms that are guaranteed by the Constitution, any that falls within the scope of the European Convention on Human Rights and its attached protocols to which Turkey is a party was violated by the public force is included. In the continuation of the said clause of the previously mentioned article of the Constitution, it is stated that the ordinary legal remedies must be exhausted in order to be able to lodge an application; and in clause four of the same article, it is stated that in an individual application, an examination cannot be done in relation to matters that need to be taken into consideration in legal remedy.

23. It is concluded that the complaint of the applicant in terms of its merits is in relation to the fact that the detention is not legal due to the fact that the maximum limit which is set forth by the Code was exceeded and thus needs to be examined within the framework of article 19 of the Constitution.

1. In Terms of Admissibility

24. The Ministry of Justice stated that, as per article 141 of the Code numbered 5271, persons who claim that they are detained in violation of law have the right to request a compensation, that this remedy shall be resorted to in the first place in reference to the judgments of the European Court of Human Rights (ECtHR) in *Demir v. Turkey* and *Balca v. Turkey*, that, in order for the compensation request to be examined in certain cases in reference to the decisions of the Supreme Court of Appeals, it is not a must for the decision in relation to the merits of the case that is heard at the court of first instance to be finalized, that, thus, these matters need to be taken into consideration in the examination for admissibility.

25. The applicant did not agree with the opinion of the Ministry on the admissibility of the application.

26. Clause three of article 148 of the Constitution is as follows:

"Everyone can apply to the Constitutional Court based on the claim that any of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public force. In order to make an application, ordinary legal remedies must be exhausted."

27. Clause (2) of article 45 of the Code numbered 6216 is as follows:

"All of the administrative and judicial application remedies that have been prescribed in the code regarding the action, act or negligence that is alleged to have caused the violation must have been exhausted before making an individual application."

28. As per the said provisions of the Constitution and the Code, all of the administrative and judicial application remedies that have been prescribed in the code regarding the action or the act that is alleged to have caused the violation must have been exhausted. Due to the fact that individual application is a secondary way of claiming rights, what is essential is for the public authorities to respect rights and freedoms and, in the case of a possible violation, to remedy this through administrative and/or judicial ordinary remedies. Therefore, the remedy of individual application can only be resorted to in cases where the violation cannot be removed despite exhausting the ordinary remedies that are set forth in code.

29. However, in addition to being accessible, the application remedies that must be exhausted must also have the capacity of compensation and offer a reasonable chance of success in resolving the complaints of the applicant when exhausted. Therefore, including these remedies in the legislation is not sufficient per se, it should also be demonstrated that they are effective in implementation or at least it should not be proven that they are not effective.

30. As indicated in the opinion of the Ministry of Justice, as per clause number (1) of article 141 of the Code numbered 5271, in which the request for compensation is regulated, it is seen that the provisions in relation to the fact that persons who are arrested, detained or the continuation of the detention of whom is decided except for the conditions that are stated in codes and the persons who are not taken before the adjudication body within reasonable time despite being detained in accordance with law can request their all kinds of material and moral damages from the State set an application mechanism to this end. However, in clause number (1) of article 142 of the same Code where the conditions for request for compensation are regulated, it is stated that it is possible to make a request for compensation "*within three months following the notification of those concerned on the fact that the decisions or judgments became final and within one year following the date when decisions or judgments became final in any case*".

31. In the present case, it is claimed that the detention had no legal justification left due to the fact that the five-year maximum detention period expired. According to this, if the continuation of detention is decided upon despite the fact that it is not legally possible, the aggrieved thereof can file a lawsuit with a request for pecuniary and/or non-pecuniary compensation within the scope of the article. However, the request of the applicant as of the date of application is not for compensation. The applicant requests a decision for his release after determining the fact that the maximum detention period that is set forth in the Code expired.

32. When the regulations of the Code numbered 5271 in relation to compensation due to protection measures are considered from this point of view, it is seen that no solution is introduced in relation to the complaint of the applicant. If resorted to, this remedy only guarantees the disposal of material and moral damages but does not provide an opportunity in relation to the release of the person even if it is found out that s/he is detained unlawfully. As long as the state of detention does not end before the examination of the merits of the individual application, the fact that the person resorts to this remedy cannot be considered to be efficient in terms of his/her concrete request and thus does not need to be exhausted.

33. However, when it is considered that the state of detention evolved into de jure detention due to the fact that the court case about the applicant was decided and, thus, although his request at the time of application was for release, that was not possible after the decision, it is possible to remove the violation in the case that it is determined that the constitutional rights which are the subject matter of the application are violated and a compensation is adjudged. In this case, it needs to be evaluated whether it is obligatory to resort, with priority, to the remedy that is stated in article 141 and the subsequent articles of the Code numbered 5271.

34. The Ministry has referred to certain decisions to assert that this remedy needed to be resorted to with priority. The decisions of the Supreme Court of Appeals that the Ministry has referred to in its opinion indicate that the finalization of the main judgment is not sought for a request for compensation in certain cases (Decisions of the 12th Penal Chamber of the Supreme Court of Appeals dated 4/4/2012 and numbered M. 2011/15700, D. 2012/9187; dated 15/5/2012 and numbered M. 2011/20114, D.2012/12183). It is also possible to come across decisions where the detention period is not considered to be reasonable as it is longer than the sentence ruled and, thus, it is necessary to rule on compensation (Decisions of the 12th Penal Chamber of the Supreme Court of Appeals dated 17/12/2012 and numbered M. 2012/20277, D. 2012/27572; dated 3/1/2013 and numbered M. 2012/24083, D.2013/1). However, none of these examples constitute a precedent that the said remedy is an efficient one in terms of the present case.

35. Due to the reasons explained, the opinion of the Ministry that application remedies are not exhausted is inadmissible. As it is understood that the claims of the applicant are not devoid of a basis and there is no other reason for inadmissibility, it needs to be decided that the application is admissible.

2. Examination on Merits

36. The applicant complains that the detention has no legal basis since the period of detention exceeded the maximum period that is set forth in the Code.

37. Article 19 of the Constitution is as follows:

> *"Everyone has personal liberty and security.*
>
> *No one can be deprived of his/her liberty except for the following cases, the procedure and conditions of which are specified in the code:*
>
> *Execution of penalties restricting liberty and of security measures ruled by courts; arrest or detention of an individual as required by a court verdict or an obligation set forth in code; execution of an order for the rehabilitation of a minor under supervision or for bringing him/her before the competent authority; execution of a measure taken in compliance with the principles specified in the code for the treatment, education or rehabilitation at an institution*

of a mentally ill person, a drug or alcohol addict, a vagabond who poses a threat to the society or a person who may possibly spread diseases; arrest or detention of a person who illegally attempts to enter or enters into the country, or for whom a deportation or extradition order is issued.

Individuals against whom there is strong evidence of delinquency may only be detained through a decision by a judge in order to prevent their escape, prevent the destruction or manipulation of evidence or in other circumstances specified in the law which require detention. Arresting a person without a decision by a judge may only be possible in the event of in flagrante delicto or in cases where a delay is prejudicial; the conditions for this are indicated in the code.

The reasons for arrest or detention and the charges against them are notified to the arrested or detained individuals in writing in any case and, if it is not possible to do this immediately, orally at once and in cases of collective offense until appearance before the judge at the latest.

The arrested or detained individual is brought to the court within forty eight hours at the latest and, for collective offenses, within four days at the latest excluding the time required for being sent to the court that is closest to the place of detention. No one can be deprived of his/her liberty without a court verdict after the end of such periods. These periods can be extended in the case of a state of emergency, martial law and war.

The fact that an individual is arrested or detained is immediately notified to his/her next of kin.

Detained individuals have the right to request for being tried within a reasonable time and being released during investigation or prosecution. Release can be linked to a guarantee in order to ensure that the relevant individual is present at the court during trial or that the sentence is executed.

For any reason whatsoever, an individual whose liberty is restricted has the right to apply to an authorized judicial body in order to ensure that a decision is made about his/her case as soon as possible and in order to be released immediately if such restriction is in violation of the law.

The loss suffered by individuals who are subjected to a procedure apart from such principles will be paid by the State in accordance with the general principles of the law of damages."

38. This complaint of the applicant in relation to the fact that the legal detention period is exceeded, needs to be evaluated within the framework of clause three of article 19 of the Constitution.

39. In its opinion, the Ministry of Justice has stated that courts have full discretionary power in interpreting the codes on the condition that they do not act arbitrarily, that the 12th and 13th Assize Courts of İstanbul took into consideration the five-year maximum limit separately for each offense in the concrete incident, that, however, the ECtHR may consider detention based on more than one criminal allegation as one single detention.

40. The applicant has stated that the part of the opinion in relation to the fact that detention that is based on more than one criminal allegation can be considered as one single detention means the acceptance of his rightness.

41. After the fact that everyone has the right to personal liberty and security is stipulated as a principle in paragraph one of article 19 of the Constitution, the cases in which

persons can be deprived of their freedom are listed in a limited way in paragraphs two and three thereof on the condition that their forms and conditions are stipulated in the code. Therefore, the restriction of the right of the person to liberty and security can only be the case in the event that one of the cases which are specified within the scope of the aforementioned article of the Constitution exists.

42. In article 13 of the Constitution with the heading"*Restriction of fundamental rights and freedoms*", it is stipulated that fundamental rights and freedoms may only be restricted on the basis of the reasons that are mentioned in the relevant articles of the Constitution and by code without prejudice to their essence that these restrictions cannot be contrary to the letter and spirit of the Constitution, the requirements of the democratic social order and of the secular Republic and the principle of proportionality. The criterion in article 19 of the Constitution that the forms and conditions of cases when the right to personal liberty and security can be restricted are stipulated in code is in congruence with the rule in article 13 of the Constitution that fundamental rights and freedoms can only be restricted by code.

43. The liability to ensure the conformity of the restrictions in relation to personal liberty and security with the principles and procedures that are stated in code belongs, in principle, to administrative bodies and courts of instance. The administrative bodies and courts are liable to obey the legal rules in relation to principle and procedure. The purpose of article 19 of the Constitution is to protect the individual from deprivation of his/her liberty in an arbitrary way and, in exceptional cases that are set forth in the article, the restrictions that are to be applied to personal liberty need to be in conformity with the purpose of the article and not to lead to any arbitrary practice. For this reason, as per the rule which is included in paragraph three of article 19 of the Constitution that the forms and conditions of deprivation from liberty be stipulated in code, whether or not the status of being detained of the applicant has *"legal"* basis, and, in cases where law permits deprivation from liberty, whether or not the implementation of law is sufficiently accessible, irrefutable and predictable in order to prevent arbitrariness as per the principle of the state of law need to be examined by the Constitutional Court.

44. Detention is regulated in article 100 and the subsequent articles of the Code numbered 5271. According to article 100, a person can only be detained in the event that there are cases which indicate the existence of strong doubts on him/her as to the effect that s/he has committed a crime and that there is a ground for detention. The grounds for detention are also specified in the article. According to this, a decision on detention can be delivered (a) if the suspect or accused escapes, hides or there are concrete cases which arouse the suspicion that s/he will escape, (b) if the behaviors of the suspect or accused constitute strong doubt in the cases of 1) destruction, concealment or alteration of evidence, 2) attempting to put pressure on witnesses, victims or others. In the rule, the offenses that can be considered to be a reason for detention if there is a strong suspicion that they are committed are stated as a list.

45. In paragraph number (2) of article 102 of the Code numbered 5271, it is stated that in work that falls within the competence of the assize court, the period of detention is two years at maximum and this can be extended in compulsory cases by indicating the justification thereof, but that the period of extension cannot exceed three years in total. Accordingly, it is understood that the total detention period including the periods of extension can be five years at maximum (see the decision of the General Penal Assembly of the Supreme Court of Appeals dated 12/4/2011 and numbered E.2011/1-51, D.2011/42).

46. In the present case, the applicant who was detained on the date of 7/1/2007 placed a request for release on the claim that the maximum period which is set forth in relation to

detention as per the above-stated provisions of the Code numbered 5271 had expired. Both the court that heard the case and the court that examined the objection decided on the continuation of detention by indicating their justifications in terms of the maximum five year period (§§ 12 and 13). It is stated in the justification for both decisions that, "*while the one single writ of detention that is issued for crimes falling within the competence of assize courts is executed, detention needs to be evaluated separately for each crime…*". The courts arrived at this conclusion after evaluating that the period would be calculated separately in the case that separate court cases were filed for each crime which set the basis for detention and these court cases were heard by separate judicial bodies, that the same approach should be adopted in a court case that was filed in relation to more than one crime falling within the competence of assize courts or in court cases which were joined later despite being filed separately, that this would be more convenient in terms of the principles of justice and equality.

47. As long as the rights and freedoms stipulated in the Constitution are not violated, the issues as regards the interpretation of the provisions of code or material or legal mistakes in the decisions of the courts of instance cannot be handled in the examination of an individual application. The interpretation of the provisions of code on detention and their application to present cases are also covered by the discretionary power of the courts of instance. However, in case of a clear arbitrariness in the discretion of the evidence through comments which are clearly contrary to the code or the Constitution, such decisions which result in the violation of a right and freedom should be examined in an individual application. The acceptance of the contrary does not accord with the aim of introducing the individual application. Therefore, the examination needs to be carried out within this framework.

48. The maximum legal periods for which persons can be detained at the stages of investigation and prosecution are regulated in article 102 of the Code numbered 5271. In the text of the article, a distinction is made in terms of works that fall and do not fall within the competence of an assize court. When it is taken into consideration that, in case the investigations and prosecutions in relation to more than one crime about the individuals are conducted over one file or they are joined in one file, these investigations and prosecutions will be conducted within some certain integrity, it is evident that a detention measure that is executed will bear a consequence in terms of all of the investigations and prosecutions. Therefore, it is understood that the maximum period of detention needs to be five years at most in terms of all the crimes which are within the scope of the file for which the person is being tried. Since the detention measure is not a sanction, the calculation of the maximum detention period separately for each crime that is within the scope of the same file cannot be accepted. Factors such as the number of crimes and defendants and that the court case is a complex one can be factors to be taken into consideration in the evaluation on whether the detention period is reasonable or not but it is not possible for them to be taken as basis in the determination of the legal detention period. It seems not possible to arrive at a different conclusion when the wording and purpose of the norm, the place of the detention measure within the criminal justice system and the narrow interpretation of limitations towards the liberty of person through the arrangement in article 102 of the Code numbered 5271 are evaluated all together.

49. On the other hand, clause seven of article 19 of the Constitution guarantees the reasonable period under detention. Therefore, the maximum limits that are introduced by law for the period of detention can apply for exceptional cases where the reasonable period is not exceeded and do not mean in any case that the person can be detained until this period expires. On the contrary, even in cases where the maximum limit is not exceeded, if detention

has exceeded the reasonable period in present cases, the conclusion that the constitutional right is violated will be arrived at.

50. The right to fair trial is guaranteed in article 36 of the Constitution. In this scope, being tried within a reasonable period is a right that is vested to everyone. The conclusion of court cases with the least cost and the best possible pace is also a duty that is delegated to the judiciary in article 141 of the Constitution. The extension of the maximum period with interpretations in relation to extension on the justification for the number of crimes or with general statements without indicating justification is of a quality that may set the basis for possible breaches in terms of the right to be tried within a reasonable period, in addition to potential breaches of liberty and security. Such a practice cannot be accepted since it can potentially turn the breach of liberty and security into an almost automatic one and the breach of the right to be tried within a reasonable period into a potential one.

51. On the other hand, it is necessary to bring limitations to the right to liberty and security by means of a code and to openly state in code the form and conditions of limitation. Therefore, the text of the code must be written in a way to allow that individuals, by getting legal support when necessary, can have a certain degree of openness and accuracy in terms of foreseeing the reasons and periods of detention. Therefore, prior to its implementation, the code should be sufficiently foreseeable as regards its possible effects and consequences. Nevertheless, as it will not always be expected that the text of a code shows all consequences and effects, the degree of desired clarity can be determined by considering factors such as the content of the text in question, the area which it aims to regulate and the status and size of the group that it addresses. A code which has such qualities also needs to be easily accessible.

52. It is understood that the maximum period of detention in the Code numbered 5271 is five years at maximum together with the extensions in terms of workload which falls within the competence of assize courts and that the regulation is foreseeable in its existing form. However, the interpretation of courts of instance that the legal period of detention needs to be calculated separately for each crime is appropriate for extending the maximum period for which individuals can be tried under detention in an indefinite and unforeseeable manner. Yet, in case there are more than one criminal allegation against a person, when the maximum period of detention is calculated separately for each of them, the period for which a person can be deprived of his/her liberty will be extended in an unforeseeable manner. It is apparent that this situation is not foreseeable in terms of the applicant. It is impossible to think that, in a state of law, an individual who has not been proven to be guilty yet be deprived of their liberty for an indefinite period due to the interpretation which the court has adopted.

53. The applicant was detained on the basis of a writ which was issued on 7/1/2007. Within the context of the crimes which set the basis for detention and were attributed against the applicant, the court that heard the case included the claims of "*opposition to the Code numbered 6136 and aiding and abetting an armed organization by (procuring arms and hiding the arms that are used in criminal activities)*"; whereas the court that examined the objection included the claims of "*becoming a member of a terrorist organization in order to commit a crime, murder, opposition to the Code numbered 6136, shooting in a way to inflict fear, concern and panic*". It does not accord with the nature and quality of the measure to assume that, despite having so many crimes that are the subject matters of prosecution, detention will continue over one of these and that, upon the expiry of the legal period, another one comes into effect and a new five-year period will start. In terms of the present case, the maximum period of detention which is set forth in clause number (2) of article 102 of the Code numbered 5271 expired on the date of 7/1/2012. In this case, the state of detention of the

applicant between this date and the date of 4/4/2013 when the judgment of conviction against him was ruled does not comply with the forms and conditions that are sought in the code.

54. Due to the reasons that are explained, it needs to be decided that clause three of article 19 of the Constitution was violated.

3. In Terms of Article 50 of the Code No. 6216

55. Under clause number (1) of article 50 of the Code numbered 6216, it is indicated that in the event that a violation decision is delivered at the end of the examination on merits, what needs to be done to remove the violation and its consequences are adjudged; however, it is adjudged that a review for legitimacy cannot be done, that a decision with the quality of administrative act and action cannot be delivered.

56. In the application, it has been concluded that clause seven of article 19 of the Constitution was violated. The applicant has reserved his request for compensation. The state of detention has ended upon the rendering of a decision of conviction about the applicant. In this case, it is concluded that apart from the determination of the violation, there is nothing that needs to be done in order to remove the consequences thereof.

V. JUDGMENT

In the light of the reasons explained, it is decided **UNANIMOUSLY** on the date of 2/7/2013;

A. That the application is ADMISSIBLE,

B. That clause three of article 19 of the Constitution is VIOLATED due to the fact that "*the maximum detention period that is set forth in the Code is exceeded*",

C. That the trial expenses of 2,812.50 TL in total, composed of the fee of 172.50 and the counsel's fee of 2,640.00 TL, which were made by the applicant be PAID TO THE APPLICANT,

D. The payment be made within four months as of the date of application by the applicant to the State Treasury following the notification of the decision; that in the event that a delay occurs as regards the payment, the legal interest be charged for the period that elapses from the date, on which this period comes to an end, to the date of payment.

President	Member	Member
Alparslan ALTAN	Recep KÖMÜRCÜ	Celal Mümtaz AKINCI

Member	Member
Muammer TOPAL	M. Emin KUZ