



REPUBLIC OF TURKEY
CONSTITUTIONAL COURT

SECOND SECTION

DECISION

Application No: 2013/2001

Date of Decision: 16/5/2013

SECOND SECTION

DECISION

President	: Alparslan ALTAN
Members	: Serdar ÖZGÜLDÜR Osman Alifeyyaz PAKSÜT Recep KÖMÜRCÜ Engin YILDIRIM
Rapporteur	: Melek ACU
Applicant	: Mehmet MERCAN
Counsel	: Att. Mustafa Haki OKUDUCU

I. SUBJECT OF APPLICATON

1. The applicant has claimed that the verdict of conviction ruled by the 5th Assize Court of Bakırköy where he was tried for the crimes of premeditated murder, attempt to premeditated murder,illicitness to the Code No. 6136 and dated 10/7/1953 on Firearms and Knives and Other Tools is in violation of his constitutional rights for restraining his rights of defense.

II. APPLICATION PROCESS

2. The application was lodged on 11/3/2013 via the 5th Assize Court of Bakırköy. As a result of the preliminary examination of the petition and its annexes thereof as conducted in terms of administrative aspects, it was found out that there was no deficiency that would prevent submitting thereof to the Commission.

3. It was decided on 14/5/2013 by the Third Commission of the Second Section that 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, since a resolution was required in order for a ruling to be made regarding the application.

III. FACTS AND CASES

A. Facts

4. The facts in the petition of application are as follows:

5. A public action was filed against the applicant with the indictment dated 27/5/2010 and No: M.2010/56288 of the Chief Public Prosecutor's Office in Bakırköy for crimes of premeditated murder, attempt to premeditated murder and carrying weapon without license.

6. The 5th Assize Court of Bakırköy, with its decision No. M.2010/214, D.2011/294 dated 13/10/2011 has decided that the applicant be convicted for the alleged crimes.

7. Upon the bill of review, the decision that was approved with the writ No: M.2012/1242, D.2012/9080 dated 5/12/2012 of the 1st Criminal Chamber of the Supreme Court of Appeals,, was finalized on the same date.

8. The applicant has made an application on the date of 24/12/2012 to the Office of the Chief Prosecutor of the Republic at the Supreme Court of Appeals for the pursuance of the remedy of objection in compliance with article 308 of the Code of Criminal Procedure No. 5271 and dated 4/12/2004, the Office of the Chief Prosecutor at the Supreme Court of Appeals has ruled in its decision No: **KD.2012/42061** and dated 24/1/2013 that such request be dismissed with the justification that the legal and the *de facto* circumstance to require an objection was missing.

B. Relevant Law

9. Article 8 of the 'Law on the Effectiveness of the Turkish Civil Code and the Procedure of Its Application' No: 5320 dated 23/3/2005, articles 305 and 326 of the abolished Code of Criminal Procedures No: 1412, dated 4/4/1929, article 308 of the Code No: 5271.

IV. EXAMINATION AND JUSTIFICATION

10. The application of the applicant dated 11/3/2013 and numbered 2013/2001 was examined during the session held by the court on 16/5/2013 and the following were ordered and adjudged:

A. Claims of the Applicant

11. By claiming that the decision of conviction that was made following the trial at the 5th Assize Court of Bakırköy was wrong, that the evidences were not collected sufficiently and his right to defense was restricted, the applicant has requested that the violation of his right to a fair trial be established and that such violation be remedied.

B. Evaluation

12. Paragraph (5) of article 47 of the Law on the Establishment and Trial Procedures of the Constitutional Court dated 30/3/2011 and numbered 6216 with the side heading "*Individual application procedure*" is as follows:

"The individual application should be made within thirty days starting from the exhaustion of legal remedies; and from the date when the violation is known if no remedies are envisaged. Those who fail to apply within due duration upon just excuse can apply in fifteen days starting from the ending date of such excuse and with evidence bearing proof of their excuses. The Court firstly shall accept or reject such demand by way of examination of the admissibility of the applicant's excuse."

13. Paragraph (1) of article 64 of the Internal Regulation of the Constitutional Court entitled "*Duration of application and excuse*" is as follows:

"The individual application should be made within thirty days starting from the exhaustion of legal remedies; and starting from the date when the violation is acknowledged if no remedies are envisaged."

14. One of the admissibility criteria of the individual application is the application period. The period is a consequence of procedure, which has to be taken into consideration during each instance of the application.

15. In compliance with paragraph (5) of article 47 of the Code No. 6216 and paragraph No. (1) of article 64 of the Internal Regulation, individual applications have to be made in thirty days starting from the date of exhaustion of application remedies, and in cases when no application remedies are envisaged, starting from the date on which the violation was acknowledged, directly to the Constitutional Court or through other courts or through the foreign representatives

16. Although in the aforementioned article of the Internal Regulation a date of 'exhaustion of application remedies' is mentioned concerning the commencement of the application period, such expression shall still be understood as the date on which the final verdict is notified to the applicant or the decision is opened to the access of the applicant. Taking the date of the final verdict as the basis through an interpretation otherwise shall result in either the applicant not making any applications as thirty days will have passed starting from when he acknowledges such decision and his right of petition would thusly be violated ; or the exercise of such right would be restricted since there would only be a limited amount of time left for the application.

17. The decision No: M.2010/214, D.2011/294, dated 13/10/2011 of the 5th Assize Court of Bakırköy, which is the issue of application, has been approved by the writ of the 1st Criminal Chamber of the Supreme Court of Appeals No: M.2012/1242, D.2012/9080, dated 5/12/2012. The applicant, on the date of 24/12/2012, has made a request to the Office of the Chief Prosecutor of the Republic at the Supreme Court of Appeals for the pursuance of the remedy of objection against the decision of approval in compliance with article 308 of the Code No: 5271, and with its decision No: **KD.2012/42061** and dated 24/1/2013, the Office of the Chief Prosecutor of the Republic at the Supreme Court of Appeals has decided to dismiss such demand and the applicant was notified of such decision on the date of 25/2/2013.

18. The appeal phase is the final application remedy in criminal justice, and the remedy of objection to decisions that have passed the investigation of appeal is legitimized to the Chief Prosecutor of the Republic at the Supreme Court of Appeals as per article 308 of the Code No. 5271. Thus, the applicant's demand concerning the pursuance of the remedy of objection is a request to mobilize merely the discretion of the Chief Prosecutor of the Republic at the Supreme Court of Appeals. Within this scope, as the applications that have been made are not accepted as remedies that are needed to be exhausted prior to individual application, pursuance of such remedy shall have no impact whatsoever on the period of individual application.

19. In the present fact, remedies of application have been exhausted upon the approval, on the date of 5/12/2012, of the 1st Chamber of the Supreme Court of Appeals the decision of the 5th Assize Court of Bakırköy. Although the date of notification of this decision is not understood from the scope of the file, it is obvious that one must accept that the applicant was informed about the final verdict, on the date of 24/12/2012 at the latest, when he applied to the Office of the Chief Prosecutor of the Republic at the Supreme Court of Appeals. In this case, when the individual application against the said verdict had to be made latest until the date of 23/1/2013, it was made on the date of 11/3/2013, hence the conclusion concerning the presence of statute of limitations in the application.

20. For reasons explained, it must be ruled that the individual application that has not been made in thirty days starting from the date of exhaustion of remedies of application, is inadmissible as a result of "*statute of limitations*," without being examined from the perspective of other admissibility condition.

V. JUDGMENT

It is **UNANIMOUSLY** decided on the date of 16/5/2013 that the application is **INADMISSIBLE** because of "*statute of limitations*" and that the trial expenses be charged on the applicant.

President
Alparslan ALTAN

Member
Serdar ÖZGÜLDÜR

Member
Osman Alifeyyaz PAKSÜT

Member
Recep KÖMÜRCÜ

Member
Engin YILDIRIM