REPUBLIC OF TURKEY
CONSTITUTIONAL COURT

FIRST SECTION

DECISION

THE APPLICATION OF ALİ İLHAN BAYAR

(Application Number: 2013/725)

Date of Decision: 19/11/2014

FIRST SECTION

DECISION

President	:	Serruh KALELİ
Members	:	Nuri NECİPOĞLU
		Hicabi DURSUN
		Erdal TERCAN
		Hasan Tahsin GÖKCAN
Rapporteur	:	Yunus HEPER
Applicant	:	Ali İlhan BAYAR
Counsel	:	Att. İnan AKMEŞE

I. SUBJECT OF APPLICATION

1. The applicant asserts that the right to a fair trial protected under article 36 of the Constitution was violated due to the fact that he was punished in the criminal case through which he was tried although there was no certain and convincing evidence, that the trial before the Supreme Court was conducted without any hearing, that he was not able to ask any questions to a witness whose statement was taken upon instruction and that his request for making his defense in Kurdish which was his mother tongue was dismissed.

II. APPLICATION PROCESS

2. The application was lodged on the date of 16/1/2013 via the 2nd Civil Court of First Instance of Istanbul. As a result of the preliminary examination that was carried out in terms of administrative aspects, it was determined that there was no situation which prevented the submission of the application to the Commission.

3. It was decided by the Third Commission of the First Section on the date of 7/4/2014 that the examination of admissibility be conducted by the Section and the file be sent to the Section.

4. On the date of 12/6/2014, it was decided by the Head of the Section that the examination of admissibility and merits be carried out together.

5. The facts and cases, which are the subject matter of the application, and a copy of the application were sent to the Ministry of Justice for its opinion. The opinion letter of the Ministry of Justice dated 13/8/2014 was notified to the applicant on the date of 29/8/2014, the applicant submitted his opinion to the Constitutional Court on the date of 10/9/2014.

III. FACTS AND CASES

A. Facts

6. As expressed in the application form and the annexes thereof and the opinion of the Ministry, the facts are summarized as follows:

7. The Office of the Chief Public Prosecutor of Istanbul filed a public case on the applicant through the indictment dated 23/2/2009 before the 11the Assize Court of Istanbul with the claim that he had committed the offenses of being a member of an armed terrorist organization, possessing hazardous substances without permission, damaging property and shooting in a way to inflict fear, concern and panic.

8. The applicant conveyed to the Court of First Instance that he wanted to make his defense in Kurdish on the date of 24/6/2011 and the Court dismissed the request on the same date. The justification of the court for dismissal is as follows *verbatim*:

> *"Even if the accused Ali İlhan Bayar wanted to make his defense in the Kurdish language which was his mother tongue and requested that an interpreter who spoke the Kurdish language be present at the hearing for the interpretation of the defense that he would make in the Kurdish language to be interpreted in to the Turkish language,*
>
> *By considering the decision of the European Commission of Human Rights, which is a body of the European Court of Human Rights that examines whether or not applications meet the prerequisites, in its decision in K. v France with the Application No:10210/82 and dated 07.12.1983 "The minority member who is a French citizen cannot be considered within the scope of the right to have the free assistance of an interpreter in article 6/3-e of the ECHR as s/he was born and attended school in France, because article 6/3-e of the ECHR prescribes the appointment of an interpreter when one of the cases where the accused does not speak or, in other words, understand the main tongue of the country or fails to express himself/herself is in question, it is considered that the accused understands the official language of that country and expresses himself/herself as s/he was born, lived and attended school in that country",*
>
> *As it is also known that the accused was born in Turkey and received education in various institutions and that the accused also spoke the Turkish language in the phases of the trial up to this day and made his statements in Turkish during the investigation phase, that therefore, his request for making a defense in the Kurdish language today and for an interpreter to be present at the hearing for the interpretation of his defense to the Turkish language is not based on a legal need, but based on some justifications which are not legal,*
>
> *That it is stated that the official language of the State of the Republic of Turkey is Turkish by enacting the provision "Its language is Turkish" in article 3/1 of the Constitution of the Republic of Turkey, that it is stated that an interpreter can be appointed for the accused or aggrieved only if s/he does not speak Turkish to an extent to be able to express himself/herself by enacting the provision "if the accused or aggrieved does not speak Turkish to an extent to be able to express himself/herself; the essential points pertaining to the allegation and defense in the trial shall be interpreted through an interpreter appointed by the court" in article 202/1 of the CCP, that therefore, the accused made his statements in Turkish during the investigation phase, that the accused also requested for an interpreter by stating that he wanted to make his defense in Kurdish by way of speaking Turkish in the beginning of the hearing,*
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> *That it is an obligation for everyone who speaks Turkish to make a defense in the Turkish language before all courts of the Republic of Turkey within the aforementioned judicial legislation irrespective of their ethnic origin or of which country s/he is a citizen of, that it is not possible for a person who speaks Turkish to make a defense in not only Kurdish, but also in any other foreign languages (for example, in English or German language) except for the Turkish language, that this subject is not a matter which is in the discretion of the judges, but an obligation, that given the Turkish judicial practice in relation to this subject, the statements or defense of the accused, aggrieved or witness who does not speak the Turkish language were determined in Kurdish or another language (for example, in English or German language) in*

our court and many other courts by way of making an interpreter who speaks the language that s/he can speak present at the hearing,

Moreover, in the event that the accused is allowed to make his defense in the Kurdish language by dismissing the request of the accused for making an interpreter present at the hearing for the interpretation of the defense that he would like to make in the Kurdish language into the Turkish language, as it will not be actually possible to make this defense written in the minutes of the hearing without having it translated due to the fact that the Court panel does not know the Kurdish language, as it is understood that solely dismissing the request for an interpreter will not have any logical and legal basis,

It has been unanimously held that the request of the accused for making his defense in the Kurdish language which is his mother tongue and for an interpreter who speaks the Kurdish language being made present at the hearing for the interpretation of this defense that he would make in the Kurdish language to the Turkish language be DISMISSED and that public hearing has been proceeded."

9. The 11th Assize Court of Istanbul decided through its decision dated 23/12/2011 that the applicant be sentenced to an imprisonment of two 5-year terms and a judicial fine of 140 TL due to the offense of possessing hazardous substances without permission; an imprisonment of 6 months due to the offense of damaging property; an imprisonment of 1 year and 6 months due to the offense of shooting in a way to inflict fear, concern or panic and an imprisonment of 7 years and 6 months due to the offense of being a member of an armed terrorist organization.

10. Upon the appeal of the applicant, with the decision of the 9th Criminal Chamber of the Supreme Court , it was held that "*the request for a hearing be dismissed as its conditions have not materialized in respect of the period of the punishments determined*"; the decision of the 11th Assize Court of Istanbul was reversed in terms of the offenses of shooting (throwing explosive substances) in a way to inflict fear, concern or panic and of damaging property; approved in terms of the offenses of being a member of an armed terrorist organization, of possessing hazardous substances without permission. The decision became final on the same date in terms of the approved verdicts.

11. The applicant states that he was informed about the decision of approval on the date of 17/12/2012. The ministry did not file an objection with regard to this subject.

12. The individual application was lodged on the date of 16/1/2013.

B. Relevant Law

13. Article 202 of the Code of Criminal Procedure dated 4/12/2014 and numbered 5271 with the side heading of *"Cases where an interpreter will be made present"* is as follows:

"(1) If the accused or aggrieved does not speak Turkish to an extent to be able to express himself/herself; the essential points pertaining to the allegation and defense in the trial shall be interpreted through an interpreter appointed by the court.

(2) The essential points pertaining to the allegation and defense shall be explained to the accused or aggrieved who is handicapped in a manner which they can understand.

(3) Provisions of paragraph one and two shall also apply for the suspect, aggrieved or witnesses heard at the investigation stage. At this stage the interpreter shall be appointed by the judge or the Public prosecutor.

(4) (Additional paragraph: article 1 of the Code dated 24/01/2013 and numbered 6411) Moreover, the accused can;

a) Upon reading of the indictment,

b) Upon submission of the opinion on the merits, make his/her verbal defense in another language in which s/he has declared that s/he is able to express himself/herself better. In this case, the interpretation services shall be fulfilled by an interpreter of the accused's choosing from a list created as per paragraph five. Expenses of said interpreter shall not be met by the State Treasury. These means cannot be abused towards the purpose of procrastinating adjudication.

(5) (Additional paragraph: article 1 of the Code dated 24/01/2013 and numbered 6411) The interpreters shall be chosen among persons included in the list prepared annually by the provincial judiciary justice commissions. Public prosecutors and judges may select an interpreter not only from the lists prepared for the province they are in but also from lists prepared in other provinces. The procedures and principles pertaining to the preparation of said lists shall be established through a regulation."

14. Paragraph number (1) of article 8 of the Code on the Enforcement and the Form of Application of the Code of Criminal Procedure dated 23/3/2005 and numbered 5320 is as follows:

"(1) Articles 305 to 326 of the Code of Criminal Procedure except for paragraphs four, five and six of article 322 shall apply on the decisions against which the remedy of appeal are resorted to before the date when regional courts of justice will begin their duties and which will be announced in the Official Gazette in accordance with the provisional article 2 of the Code on the Establishment, Duties and Authorities of Judicial Courts of First Instance and Regional Courts of Justice Appeal dated 26.9.2004 and numbered 5235 until they become final.(Additional sentence: 06/12/2006 - art. 29 of the Code numbered 5560) The Chief Public Prosecutor of the Supreme Court can apply to the relevant criminal chamber or the General Penal Assembly for the correction of material mistakes with regard to the writing in the decisions of the criminal chambers and the General Penal Assembly of the Supreme Court ."

15. Article 318 of the Code of Criminal Procedure dated 4/4/1929 and numbered 1412 with the side heading of *"Hearing in the examination of heavy penalty verdicts"* is as follows:

"In terms of verdicts in relation to heavy penalty, the Supreme Court shall conduct its examination by way of the holding of a hearing upon the request of the accused in his/her appeal petition or, if it wishes, in an ex officio fashion. The date of the hearing shall be notified to the accused or, upon his/her request, to his/her defense counsel. As can the accused be present at the hearing, so can s/he have himself/herself represented by a defense counsel with the power of attorney.

If the accused is under detention, s/he cannot file any request for appearing in person."

IV. EXAMINATION AND JUSTIFICATION

16. The individual application of the applicant dated 16/1/2013 and numbered 2013/725 was examined during the session held by the court on 19/11/2014 and the following were ordered and adjudged:

A. Claims of the Applicant

17. The applicant asserted that the evidence was evaluated in a deficient and erroneous manner, that the decision of conviction was issued although there was insufficient

evidence and that he received punishment unrightfully in the case he was tried, due to the offenses of being a member of an armed terrorist organization and of possessing hazardous substances without permission. Moreover, the applicant claims that although there was hostility between the witnesses of minutes and him, the statements of these witnesses were considered by the Court, that the Gendarmerie officials who were considered as the witnesses of minutes applied torture and bad treatment while taking statement, that for this reason, the statements taken during the investigation were invalid, that he was not given the opportunity of questioning some witnesses as their statements were taken upon instruction. The applicant asserts that the fact that no hearing was held during the appeal trial and that although he wanted to defend himself in Kurdish, it was not permitted had the quality of restricting his right to defense. The applicant asserted that the right to personal liberty and a fair trial defined in articles 19 and 36 of the Constitution was violated, filed a request for retrial and material and moral compensation.

B. Evaluation

1. In Terms of the Fairness of the Trial

18. The applicant asserted that the evidence was evaluated in a deficient and erroneous manner, that the decision of conviction was issued although there was insufficient evidence, that he received punishment unrightfully.

19. Paragraph four of article 148 of the Constitution is as follows:

"In an individual application, examination cannot be conducted on matters that need to be taken into account in the legal remedy."

20. Paragraph number (2) of article 48 of the Code on the Establishment and Trial Procedures of the Constitutional Court dated 30/3/2011 and numbered 6216 is as follows:

"*The Court, ... can rule on the inadmissibility of applications which are clearly devoid of basis.*"

21. It is stipulated in paragraph number (2) of article 48 of the Code numbered 6216 that the Court can rule on the inadmissibility of applications that are clearly devoid of basis. In paragraph four of article 148 of the Constitution, it has been bound with a rule that the complaints in relation to matters that need to be taken into consideration in the legal remedy which is evaluated within the scope of the applications that are clearly devoid of basis cannot be examined in individual applications.

22. In accordance with the aforementioned rules, as a principle, the proving of material facts and cases which are made the subject matter of a court case before the courts of instance, the evaluation of the evidence, the interpretation and implementation of legal rules and whether or not the consequence reached as regards the dispute by the courts of instance is fair in terms of merits cannot be a subject matter of the review of an individual application. The only exception for this can occur if the determinations and consequences of the courts of instance contain an obvious judgment error or explicit arbitrariness in a way which disregards justice and common sense and that this matter automatically violates the rights and freedoms within the scope of the individual application. In this framework, applications characterized as a legal remedy complaint cannot be examined by the Constitutional Court unless there is an obvious judgment error or it is explicitly arbitrary (App. No: 2012/1027, 12/2/2013, § 26).

23. In the incident which is the subject matter of the application, the applicant was tried and convicted due to the offenses of being a member of an armed terrorist organization and of possessing hazardous substances without permission. The Court of First Instance issued a decision of conviction based on the minute of the incident, the statements of witnesses and complainants and the statements of the aforementioned accused in the incident.

24. The applicant did not submit any information or evidence as to the fact that he was not able to have information on the evidence and opinions which the opposite party presented during the process of trial, that he could not find the opportunity of presenting his own evidence and claims and of objecting in an effective way against the evidence and claims presented by the opposite party or that his claims in relation to the settlement of the dispute were not heard by the courts of instance. In the decisions of the Courts of Instance, no situation which constitutes an evident discretionary mistake or obvious arbitrariness could be determined.

25. Due to the reasons explained, as it is understood that the claims asserted by the applicant have the quality of a legal remedy complaint, that the decisions of the Court of First Instance did not include any evident discretionary mistake or obvious arbitrariness, it needs to be decided that the application is inadmissible as it is *"clearly devoid of basis"* without examining other conditions of admissibility.

26. Moreover, the applicant asserted that his right to a fair trial was violated by stating that although there was hostility between the witnesses of minutes and him, the statements of these witnesses were regarded by the Court, that the Gendarmerie officials applied torture and ill treatment while taking statements and that for this reason, the statements taken during the investigation were invalid.

27. As per paragraph numbered (3) of article 47 and paragraphs numbered (1) and (2) of article 48 of the Code numbered 6216 and the relevant paragraphs of article 59 of the Internal Regulation, it rests with the applicant to prove his allegations about the incidents by submitting the evidence relevant to the incidents that are the subject matter of the application to the Constitutional Court and by making statements on the fact that the provision of the Constitution that is relied on was violated according to him. (App. No: 2013/276, 9/1/2014, § 19). The applicant should explain which of the rights and freedoms within the scope of an individual application was violated on what grounds and justifications and evidence in relation to this. (App. No: 2013/276, 9/1/2014, § 20).

28. In the event that the aforementioned conditions are not fulfilled, the Constitutional Court can consider the application inadmissible on the ground that it is clearly devoid of basis. Convincing the Constitutional Court as to the fact that the claims are not devoid of basis depends on the quality of the claims which are asserted by the applicant. At the beginning, it is obligatory for the applicant to present documents which support his claims in the application form and the annexes thereof, to make necessary explanations with regard to the rights and freedoms which he has claimed that the public force has resulted in the violation in order to prevent that a decision of inadmissibility be issued on the application. (App. No: 2013/276, 9/1/2014, § 23).

29. In the present application, the applicant did not submit to the courts of instance nor the Constitutional Court any information or evidence with regard to the fact that he received ill treatment and the hostility between the Gendarmerie officials who signed the

incident minute and him, which is one of the bases of the decision of the Court of First Instance.

30. In the present application, there is no possibility of examining the merits of the application of the applicant as he did not provide basis for his claims by failing to fulfill the aforementioned conditions.

31. Due to the reasons explained, as this part of the claims of violations asserted by the applicant could not be proven by the applicant, it needs to be decided that the application is inadmissible as it is "*clearly devoid of basis*" without examining it in terms of other conditions of admissibility.

2. In Terms of the Right to Question Witnesses

32. The applicant claims that as the statements of a witness were taken upon instruction, he was not granted the opportunity of questioning the witness.

33. In order for a trial which is equitable in general terms to be conducted, in the evidence of the principles of *"equality of arms"* and *"adversarial trial"*, it is obligatory to provide the parties with appropriate opportunities of presenting their claims. It is necessary to provide the parties with appropriate opportunities as regards presenting and having their evidence examined including the evidence of witnesses. In this sense, it is necessary to evaluate the claims of imbalance and lack of equity as regards evidence in the light of the entire trial (App. No: 2013/1213, 4/12/2013, § 27).

34. The rights to question or have witnesses questioned against the accused and to request that witnesses on his behalf be invited and heard under the same conditions as witnesses against him/her in a criminal trial have been regulated within the scope of subparagraph (d) of paragraph numbered (3) of article 6 of the Convention. For this reason, the applicant's claim as to the effect that a witness was not heard should be evaluated within the scope of article 36 of the Constitution and subparagraph (d) of paragraph numbered (3) of article 6 of the Convention.

35. Subparagraph (d) of paragraph numbered (3) of article 6 of the Convention is as follows:

> *" (3) Everyone charged with a criminal offence has the following minimum rights:*
>
> ...
>
> *d) To examine or have witnesses examined against him and to request the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;"*

36. Subparagraph (d) of paragraph numbered (3) of article 6 of the European Convention on Human Rights (Convention) grants two rights for a person on whom there is a criminal charge; firstly, the right to cross-examine witnesses against him/her, in other words, to question the witnesses of prosecution in an adversarial way before the accused at a public hearing; secondly, his/her own witnesses being invited and heard under the same conditions as the witnesses of prosecution and thus, the right to ensure the equality of arms.

37. In order for all evidence to be discussed during prosecution, as a rule, it is necessary to set forth this evidence at a public hearing and before the accused. While this rule

does have exceptions, if a conviction is, solely or to a certain extent, based on the statements made by a person whom the accused could not have the opportunity of questioning or having questioned during the phase of investigation or trial, rights of the accused are restricted in a way that does not accord with the guarantees in Article 6 of the Convention. If the incident has a single witness and judgment will be established based on only the statement of this witness, this witness should be heard at a hearing and questioned by the accused. A decision of conviction cannot be issued based on a previous statement of this witness taken in a period when the accused did not question him/her. (App. No: 2013/99, 20/3/2014, § 46, for a decision of the ECtHR in the same vein, see *Delta v. France*, App. No: 11444/85, 19/12/1990, § 36-37).

38. In addition to the aforementioned principles, the ECtHR accepts that paragraph numbered (1) of article 6 of the Convention and subparagraph (d) of paragraph numbered (3) of the same article needs to grant the accused the opportunity of objecting against the statements of a witness who makes a negative statement or while the statement of the witness is taken or at a subsequent phase of the trial. (See: *Van Mechelen and Others v. the Netherlands*, App. No: 21363/93, 21364/93, 21427/93 and 22056/93, 23/4/1997, § 51 and *Lüdi v. Switzerland*, App. No: 12433/86, 15/6/1992, § 49; *Hümmer v. Germany*, App. No: 26171/07, 19/07/2012, § 38).

39. In the present application, only the statement of one witness was taken by way of rogatory. This witness is one of the officials whose signature is present in a law enforcement minute with regard to the case which is the subject matter of the application and s/he was contented with declaring in his/her statement that the signature under this minute belonged to him/her and that the minute was accurate. It is also seen that the mentioned witness did not make any statements against the applicant.

40. While neither the accused nor his defense counsel objected against this during the hearing at which it was decided to hear the witness in question by way of rogatory, statements of the witness were read out in the Court of First Instance and before the accused later on and the accused was granted sufficient opportunities to object against the statements of the witness. On the other hand, the Court of First Instance did not predicate the decision of conviction about the applicant solely on the witness statement which is the subject matter of the complaint.

41. Due to the reasons explained, since it is understood that there is no clear violation in terms of the right to question witnesses, it should be decided that this part of the application is inadmissible due to the fact that it is *"clearly devoid of basis"*.

3. In Terms of the Right to Trial with Hearing

42. The applicant asserted that his request for the holding of a hearing was dismissed by the Supreme Court in the appeal trial, that for this reason, his right to trial with hearing and thus, his right to a fair trial was violated.

43. Paragraph one of article 141 of the Constitution is as follows:

> *"Court hearings are open to everyone. The decision to hold some or all hearings closed can only be made in cases when this is absolutely required for public morality or public security."*

44. In its previous decisions, the Constitutional Court decided that the violation of the right to a fair trial could not be mentioned in the event that the examination of legal remedy was conducted over the file after trial with hearing was held before the courts of first instance and a decision was issued. (App. No: 2013/664, 17/9/2013, § 32).

45. On the other hand, as per paragraph numbered (1) of article 8 of the Code numbered 5320, it is an obligation to conduct an appeal examination with a hearing for the actions which fall within the competence of assize courts according to article 318 of the Code numbered 1412 which is still in force. However, even if a case is tried before an assize court, when the penalty which is consequently imposed falls into the venue of the assize court in terms of competence, no hearing is held.

46. In the incident which is the subject matter of the present application, it is clear that the applicant was tried with a hearing before the Court of First Instance. Therefore, it is concluded that the applicant's right to a fair trial was not violated due to the fact that his request for the holding of a hearing during the appeal examination was dismissed by the Supreme Court because the conditions did not materialize in respect of the period of the penalties which were determined and that the appeal examination was conducted without holding a hearing.

47. Due to the reasons explained, as it is clear that there was no violation towards the right to trial with hearing, it should be decided that the application is inadmissible due to the fact that it is *"clearly devoid of basis"*.

4. In Terms of the Right to an Interpreter

48. The applicant asserted that his right to defense was violated due to the fact that although he wanted to defend himself in Kurdish, it was not permitted.

49. The regulation on the subject in subparagraph (e) of paragraph numbered (3) of article 6 of the Convention is as follows:

> "*3. Everyone charged with a criminal offence has the following minimum rights:*
>
> *...*
>
> *e) To have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

50. Subparagraph (f) of paragraph numbered (3) of Article 14 of the International Covenant on Civil and Political Rights of the United Nations is as follows:

> "*3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum rights, in full equality:*
>
> *...*
>
> *f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

51. Subparagraph (e) of paragraph numbered (3) of article 6 of the Convention guarantees the right of a person on whom there is a criminal charge to make use of the assistance of an interpreter free of charge in the event that s/he cannot understand or speak the language used in the court. This right is a right which is only granted for persons on whom

there is a criminal charge and in order to be able to make use of this right, whether or not the accused has the ability to pay is of no importance.

52. Moreover, the right to an interpreter shall apply both for the translation of documents and for oral statements; in both cases, it is necessary to conduct translation/interpretation which is necessary for the holding of a fair trial. This right does not require the interpretation of each word uttered at a hearing or the translation of all documents; the matter to be taken into consideration is whether or not the accused is at a level to be able to understand and respond to all allegations towards him/her. (see, *Kamasinski v. Austria*, App. No: 9783/82, 19/12/1989, § 74, 83).

53. However, the main question which needs to be resolved in terms of the present application is whether or not the obligation of the state is valid in terms of all accused persons who request an interpreter. At this point, it is necessary to accept that the right to an interpreter is a limited right. In other words, it is not an obligation to appoint an interpreter for everyone who requests an interpreter, but in order to ensure the benefit expected from a fair trial and only for persons who fail to know, understand and speak the language used in the trial. As a matter of fact, the failure to grant the right to defense in the language of the ethnic community of which the person is a member even though s/he speaks, understands the language used in the court and expresses himself/herself completely is not considered a violation of the convention by the ECHR. (*K. v. France (s.d.)*, App. No: 10210/82, 7/12/1983).

54. In paragraph numbered (1) of article 202 of the Code numbered 5237 with the side heading of "*Cases Where An Interpreter Will Be Made Present*", for those who fail to understand or speak Turkish which is the language used in courts, there is a regulation which is compliant with the aforementioned Convention and case-law. As a matter of fact, in paragraph numbered (1), through the provision "*If the accused or aggrieved does not speak Turkish to an extent to be able to express himself/herself; the essential points pertaining to the allegation and defense in the trial shall be interpreted through an interpreter appointed by the court.*", it is necessary to appoint an interpreter so as to ensure the benefit expected from a trial and only for those who fail to know, understand and speak the language used in the trial.

55. However, through paragraph 4 added into article 202 of the Code numbered 5271 on the date of 24/1/2013, the right to an interpreter was extended by going beyond the criteria which are put forth both in international conventions (§ 39, 40) and through the case-law of the ECtHR. According to the new rule, it is provided that the accused "*can make his/her verbal defense in another language in which s/he has declared that s/he is able to express himself/herself better upon the reading out of the indictment and the submission of the opinion on the merits*". Thus, an opportunity of making his/her oral defense in another language has been granted for the accused who "*speaks Turkish to the extent that s/he can express himself/herself*".

56. In the present incident, the applicant was taken into custody on the date of 15/1/2009 and made his defense in the Turkish language at all phases of the investigation from this date. The first hearing of the trial held before the 11th Assize Court of Istanbul was held on the date of 6/4/2009 and the applicant made a defense in the Turkish language and in a detailed way. The applicant made his defenses in Turkish at 10 hearings which were held from this date and did not state that he wanted to make use of the right to an interpreter. Finally, he stated that he wanted to make his defense in Kurdish at the 10th hearing dated 24/6/2011 and requested an interpreter. The Court of First Instance dismissed the request by

stating that the applicant spoke, understood the Turkish language used in the court and expressed himself completely, that his request for the right to defend in the ethnic language of which he was a member was not based on any legal needs (§ 8).

57. Although following the legal amendment which took place on the date of 24/1/2013, the rule as to the effect that the accused persons can make their oral defense "*in another language in which s/he has declared that s/he is able to express himself/herself better*" was introduced and the right to an interpreter was extended, in the incident which is the subject matter of the present application, the applicant conveyed to the Court of First Instance that he wanted to make his defense in Kurdish on the date of 24/6/2011 and the Court dismissed the request on the same date.

58. It is clear that the applicant made his defense in Turkish on the date when the incidents took place and that his request for making his defense in Kurdish at the 10th hearing of the trial was dismissed by the Court of First Instance on the ground that he spoke Turkish well and as per the Constitution. Therefore, it is concluded that the applicant's right to defense was not restricted and his right to a fair trial was not violated due to the fact that his request for making his defense in Kurdish was dismissed in accordance with the legislation which was in force on that date.

59. Due to the reasons explained, it is clear that there was no violation of the right to make use of an interpreter, it should be decided that the application is inadmissible in terms of this aspect due to the fact that it is *"clearly devoid of basis"*.

V. JUDGMENT

In the light of the reasons explained; it is UNANIMOUSLY held on the date of 19/11/2014 that the application is INADMISSIBLE as it *"is clearly devoid of basis"*, that the trial expenses be charged on the applicant.

President	Member	Member
Serruh KALELİ	Nuri NECİPOĞLU	Hicabi DURSUN

Member	Member
Erdal TERCAN	Hasan Tahsin GÖKCAN