

Office of the President of the Constitutional Court of the Republic of Turkey

ANKARA

APPLICATION NO: 2016/23668

APPLICANT: AHMET HÜSREV ALTAN (TC [REDACTED])

ATTORNEY: Att. FİGEN ALBUGA ÇALIKUŞU (TC [REDACTED])

Gençlik Mah. Fevzi Çakmak Cad. No 73/2 Muratpaşa /Antalya

SUBJECT : Request for adjudication concerning our application, which has been given priority status and referred to the Plenary of the Constitutional Court 22 months after it was lodged, to proceed without further delay and for the rendering of a verdict that will find the rights violations we claim in our application and rule for the applicant's release.

Today is the 184th day.

My client, novelist and journalist AHMET H. ALTAN, was taken into custody on 10 September 2016.

Based on the applicant's unlawful arrest and the lack of strong suspicion of crime, an individual application was lodged with the Constitutional Court on **8 November 2016**, claiming that the applicant's arrest, based mainly on his written work and his spoken commentary, without substantial evidence proving that the applicant had committed any crime, was in violation of the rights enshrined under Articles 19/3, and as concerns freedom of expression and freedom of the press, Articles 26 and 28 of the Turkish Constitution.

The application was given "priority" status.

The said application was reviewed on **4 July 2018** by the First Section of the Constitutional Court and referred on the same day to the Plenary of the Court.

- **Today is 4 January 2019.**
- **The Plenary of the Constitutional Court has not reviewed the application in 184 days.**
- **Today marks the 846th day the applicant has been deprived of his liberty.**

Honorable President, Honorable Judges of the Plenary;

1- As per the Internal Regulations of the Court, an application needs to go through all required phases before it comes before a Section of the court for judgment, including assessments by the rapporteur and commissions.

Again, as per article 28/4 of the Internal Regulations of the Court, if an application must be **adjudicated** by the Plenary, the relevant Section may withdraw from the file. The President of the Section refers the application to the President to be brought before the Plenary.

What we are trying to emphasize is that the applicant's file has been **pending before the court since 4 July 2018 solely for the rendering of the judgment.**

2- Aside from the fact that the applicant's file to have reached judgment phase, the case file no. 2017/127 - Judgment no. 2018/22 adjudicated by the 26th High Criminal Court of Istanbul, as part of which the applicant has been in detention on remand, has also been fully reviewed by the Plenary of the Constitutional Court.

The Plenary of the Constitutional Court rendered its judgment no. 2016/23672, issued on 11 January 2018, after reviewing the exact same case file, and after the prosecution submitted their final opinion of the case at the trial court and while the trial was in recess awaiting the trial court's decision.

In its judgment concerning the application no. 2016/23672, filed on behalf of the applicant's brother, who was standing trial as part of the same case file and on the same charges, the Constitutional Court ruled that;

- in addition to finding a violation of the right enshrined under Article 19/3 of the Constitution, **“the applicant's arrest was unlawful” on the grounds of a “lack of strong indicator of a crime”;**
- the applicant's arrest based on his **“writings and his commentary” without providing substantial evidence of crime was in violation of the applicant's rights to freedom of expression and freedom of the press, enshrined in Articles 26 and 28 of the Constitution, both during or outside a state of emergency.”**
- The 140th paragraph of the said judgment also mentions the applicant Ahmet H. Altan, who was also arrested based on his **“writings and his commentary”:**

“When considered as a whole, the matters the applicant referred to and those mentioned by the other programme guests both before and after the said expressions, the context and the content of the applicant's commentary cannot be deemed to serve as -- an unquestionable -- call for a military coup and that the applicant cannot be deemed to have had prior knowledge of the coup attempt that was going to take place the next day and to have uttered those words in order to prepare the public for the imminent coup attempt.”

The applicant Ahmet H. Altan is one of the “other programme guests” mentioned in the paragraph quoted above as written by the Constitutional Court's Plenary.

In this exact paragraph, while admitting that when considered as a whole, the expressions used by the “**guests**” on the programme cannot be deemed to have been based on prior knowledge of the coup attempt that was going to take place the next day or aimed at preparing the public for the coup attempt, nor could they be deemed as a call for a coup, the Constitutional Court also goes on to mention the applicant **Ahmet H. Altan's remarks that an election would take**

place two years later, thus expressing a **binding and final** opinion about programme guest Ahmet Hüsrev Altan as well.

The reason why the individual application mechanism exists is to prevent violations of the basic rights and freedoms enshrined in the Constitution; or in the event of a violation, eliminating the violation and its outcomes.

When considered together with the fact that the applicant is imprisoned, for his file -- that was initially granted priority status and which, in the 22 months that elapsed since, has reached the judgment phase, and which was already reviewed by the Constitutional Court -- to await judgment by the Plenary for more than six months is in conflict with the reason why the practice of individual application exists.

Another right enshrined in the Constitution is the “right to individual application.” And according to Article 148 of the Turkish Constitution, the Constitutional Court is tasked with adjudicating individual applications.

For a file concerning an imprisoned applicant that has reached the judgment phase to wait before the Plenary for months is an unprecedented situation that in itself constitutes yet another rights violation.

Throughout its history, humankind has willingly submitted to nothing but justice and the law.

We would like to live under the rule of law. In our strife to putting an end to rights violations and preventing further violations, starting today, we will be reiterating this every day.

I request that the Honorable Court take up the application that has been pending before the Plenary without further delay, determine the rights violations in the applicant’s file, and rule for the elimination of the violations.

04.01.2019

Attorney FİGEN ALBUGA ÇALIKUŞU

Representative for AHMET HÜSREV ALTAN