

The 27th High Criminal Court
To be sent to the 28th High Criminal Court

Istanbul

Appellant

Defendant : Ahmet H. ALTAN

Attorney : Atty. Figen ALBUGA ÇALIKUŞU

Subject : Our objection to the Istanbul 27th High Criminal Court's decision, dated 12.11.2019 and numbered 2019/..., ordering detention and our request for the release of Ahmet Altan

Explanation :

On 6 November 2019, the Istanbul 26th High Criminal Court rejected an objection from the prosecutor against Ahmet Altan's release **on being convicted**, following which the case was sent to the Istanbul 27th High Criminal Court.

The 27th High Criminal Court accepted the objection on the basis of made-up and unlawful justifications that are not listed under Article 100 of the Code of Criminal Procedure (CMK).

We object to this decision on the basis of the final sentence of Article 271/4 of the CMK, which states "however, decisions of arrest issued by the [respective] authority for the first time are subject to appeal."

1- The 26th High Criminal Court delivered its **verdict** in the trial, which was concluded on the basis of the case file no. 2019/252.

2- Ahmet Altan was released **on being convicted**. **The court ruled that judicial control measures, deemed to be equivalent of detention on remand given the circumstances of the case, were sufficient.**

Decision concerned is the **verdict**, not an interim decision.

3- The case file was examined by the Supreme Court of Appeals. The Office of the Chief Public Prosecutor's Office of the Supreme Court said in its opinion that the charges should be amended. And the 16th Criminal Chamber of the Supreme Court of Appeals overturned the earlier verdict in its decision no.

2019/521-4769, concluding that the charge shall be “aiding a terrorist organization without being its member.”

4- Prosecutor at the 26th High Criminal Court also requested the court to comply with the Supreme Court judgment. Eventually, the court complied and issued its own verdict that was in line with the decision of the 16th Criminal Chamber.

At this point, the defendant acquired a vested right. It is no longer subject to appeal.

5- The court of first instance is now off the case and the authority to review and rule on the verdict has passed onto the relevant higher court.

6- We know that objections, according to the CMK, can be filed against decisions that precede the verdict and do not constitute the basis for the verdict.

The prosecutor does not have the right to object to decision to release Ahmet Altan on being convicted. The CMK does not authorize such an objection.

The 27th High Criminal Court, another court of first instance which reviewed the prosecutor’s appeal after it was rejected by the 26th High Criminal Court, is not authorized to review and rule on the verdict, usurping the power vested by the law in a higher court.

7- However, at the point where we stand, where the judge rejected the request from prosecutor for detention on remand, the prosecutor appealed this decision and the authority [the court] ruled in favor of the prosecutor’s appeal and ruled for detention, we exercise our legal right under Article 274/1 of the CMK, which authorizes appeals against and review of detention decisions, to object to the decision to resort to this measure since it restricts liberty of the defendant.

8- Protection of the right to personal liberty and security, i.e., not to detain a person or release them or commute imprisonment to judicial control measures, is essential.

As part of the legal proceedings that have been ongoing for over three years and went through the Supreme Court of Appeals review, the 26th High Criminal Court ruled unanimously for Ahmet Altan’s release. The court ruled to impose an international travel ban, taking into consideration the “nature of charges, time spent in detention, that detention is a protective measure, and the conviction on the part of our court that the benefits intended to result from detention could also be achieved through implementation of judicial measures.”

9- In an inexplicable move, the 27th High Criminal Court hid its decision from me, the attorney of the defendant, even though I was present at the court registrar to receive the decision, and the court's chief judge ordered the court staff not to give me the document.

But at the same time, the decision was meticulously leaked to the press. Since the defence did not have the decision and since it was issued at 5 p.m., this decision was most certainly given to the media by the 27th High Criminal Court. This is a conduct that has legal and professional consequences, it is subject to penal sanctions.

10- From what I see on the media, the 27th High Criminal Court issued the decision for detention on the basis of made-up justifications that fall outside the scope of the case file, have no legal basis and are in violation of the preconditions for release specified in Article 100 of the CMK.

How could the chief judge, who was appointed to the position only a day before the decision, did not study the case file before and has no familiarity with it, use these justifications, especially given the fact that this case file was already examined by the Supreme Court of Appeals?

None of the grounds presented in the 27th High Criminal Court's decision is included in the Supreme Court of Appeals judgment on the case. In a case where already a verdict was issued in line with a Supreme Court of Appeals decision, such arbitrariness and unlawfulness should not be permissible.

The 27th High Criminal Court cannot use "the possibility that the sentence might get harsher during the appeal stage" as a ground for detention despite the verdict issued in line with the Supreme Court of Appeals decision.

The defendant acquired a vested right. It is not subject to appeal.

Furthermore, prosecutor of the 26th High Criminal Court, who filed the objection against release decision, also called on the court to comply with the Supreme Court of Appeals judgment in his final opinion on the case.

There is the possibility that the sentence might be revised in favor, not against, the defendant.

As part of the newly enacted judicial reform package, Article 7 of the Anti-Terror Law was amended to ensure that "expressions of thought for

the purpose of criticism cannot be prosecuted.” This amendment is in favor of my client that came after the Supreme Court of Appeals decision and it has a direct bearing on the situation of the defendant.

Is the 27th High Criminal Court above the Supreme Court of Appeals?

Is it not bound by the laws?

This is an occupational crime.

11- Another troubling issue with this decision is that the judicial control regime set out in the CMK is being disregarded:

According to the preamble of Article 100 and Article 109 of the CMK, **judicial control regime is a measure alternative to detention**. This is clear beyond question.

If a decision was made for imposition of judicial control measures, as an alternative to detention and in line with the principle of proportionality, and for release, **this decision cannot be reversed**.

At the point where we stand, given;

- That detention was abandoned in favor of judicial control measures,
- The principle of the prohibition of *reformatio in peius*, acquired vested rights and 38 months spent in detention,
- The strong possibility for a change during the appeal stage in favor of the defendant due to the amendment in Article 7 of the Anti-Terror Law under the judicial reform,
- That there can be no justifiable doubt that Ahmet Altan might flee given that he was arrested at his home eight days after he was released,
- That all evidence has been gathered,
- That the 27th High Criminal Court ruled for detention by usurping a power that it does not have, a power that is vested by the law in the appellate court and the Supreme Court of Appeals, and by relying on invented justifications that have no legal basis and that fall outside the scope of the case file,

I hereby request that the 27th High Criminal Court's decision dated 12.11.2019 be revoked and that Ahmet Altan be released.

13.11.2019

Attorney FİGEN ALBUGA ÇALIKUŞU
Representative of AHMET H. ALTAN