

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 15048/09
Hebat ASLAN and Firas ASLAN
against Turkey

The European Court of Human Rights (Second Section), sitting on 16 October 2012 as a Chamber composed of:

Ineta Ziemele, *President,*
Danutė Jočienė,
Dragoljub Popović,
Işıl Karakaş,
Guido Raimondi,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 16 February 2009,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Hebat Aslan and Mr Firas Aslan, are Turkish nationals, who were born in 1987 and 1988 respectively and are currently detained in Tekirdağ. They are represented before the Court by Mr I. Akmeşe, a lawyer practising in Istanbul.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

On 31 December 2008 the applicants were taken into police custody by officers from the anti-terror branch of the Istanbul security directorate on suspicion of membership of the PKK/KONGRA-GEL, an illegal organisation, within the context of an ongoing investigation. A search was conducted in the house where the applicants were arrested. Police found a number of publications, a weapon and bullets.

On 1 January 2009 the applicants' representative was informed by the police that on 1 March 2008, upon the request of the Istanbul public prosecutor, the 11th Chamber of the Istanbul Assize Court had rendered a decision in accordance with Article 153 of the Code on Criminal Procedure restricting access to the investigation file.

2 January 2009 the applicants were asked to make statements to the police in the presence of their lawyer. As neither the applicants nor their defence counsel could have access to the investigation file, the applicants exercised their right to remain silent during interrogation.

On 3 January 2009 the applicants made statements before the public prosecutor in the presence of their lawyer. They were asked about their photographs taken during a demonstration and about two records of telephone conversations allegedly relating to another demonstration where some protestors had thrown Molotov cocktails and to the burning of a car. The applicants maintained that they had no involvement in these offences.

On the same day the applicants appeared before a judge of the 11th Chamber of the Istanbul Assize Court. They reiterated that they had not been involved in any of the offences mentioned by the public prosecutor. According to the document containing the statements, they were suspected of membership of the PKK and of breaching Law no. 6136 on firearms. The judge remanded the applicants in custody having regard to the state of the evidence and the nature of the offences in question, and since they were strongly suspected of having committed those offences.

On 7 January 2009 the applicants' representative lodged an objection against the decision of 3 January 2009 to detain applicants. He submitted that stereotype reasoning had been given for the applicants' detention and that they could not had access to the investigation file due to the decision to restrict access, as a result of which they had been deprived of the opportunity to respond to the accusations. He further noted the facts that the judge had requested the opinion of the public prosecutor before deciding whether the applicants should be detained and that the applicants had not had the chance to submit their replies. The lawyer claimed that the principle of equality of arms and as a result Articles 5 § 4 and 6 had been violated. The applicants' lawyer requested that a hearing regarding the applicants' detention be held, that the public prosecutor's observations be communicated to them and that the applicants be released, at least on bail.

On the same day the applicants' lawyer further filed a petition with the same Chamber of the Istanbul Assize Court and requested that the decision

on restriction of access be annulled. He noted that as a result of this restriction, he could not effectively object to the decision to remand his clients in custody and maintained that this restriction constituted a violation of Article 5 § 4 of the Convention.

On 9 January 2009 the 11th Chamber of the Istanbul Assize Court dismissed both objections, holding that the decisions in issue were in accordance with the law and procedure.

On 23 January 2009 the Istanbul public prosecutor filed a bill of indictment against the applicant and three other persons. The applicants were charged with membership of the PKK.

Between 12 March 2009 and 17 April 2012 the 10th Chamber of the Istanbul Assize Court held eleven hearings in the case. According to the information submitted by the applicants to the Court in May 2012, the case is pending and the applicants are detained pending trial.

B. Relevant domestic law

The relevant domestic law can be found in the "Statement of Facts" in the case of *Uludag v. Turkey* (application no. 21292/07), which is available on the Court's website.

COMPLAINTS

The applicants complain under Article 5 § 3 of the Convention that their detention during the judicial proceedings has exceeded the "reasonable time" requirement.

Relying on Articles 5 § 4 and 6 § 3(b) of the Convention the applicants maintain that the decision restricting access to the investigation file prevented them from effectively objecting to the decision to remand them in custody and adversely affected their trial.

The applicants submit under Article 5 § 4 of the Convention that the court dismissing their objection against the decision to detain them did not hold a hearing. They further contend that the decision was given without an adversarial procedure, i.e. without obtaining their submissions in reply to the public prosecutor's observations.

The applicants also complain under Article 5 §§ 3 and 4 of the Convention that their remand in custody was ordered and prolonged and their objections were dismissed by the national courts without giving sufficient reasoning.

The applicants contend under Article 5 § 5 of the Convention that they do not have a remedy whereby they can claim compensation for the alleged violations of Article 5 §§ 3 and 4 of the Convention.

They finally maintain under Article 13 of the Convention that they did not have an effective remedy in national law for their aforementioned Convention grievances.

THE LAW

1. The applicants submit that a number of aspects of the procedure regarding their detention pending judicial proceedings violated their rights guaranteed under Article 5 §§ 3, 4 and 5 and Article 13 of the Convention.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicants complain under Article 6 § 3(b) of the Convention that the decision restricting access to the investigation files had an adverse effect on their trial.

The Court observes that the criminal proceedings against the applicants are still pending. This part of the application is premature and must therefore be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention (see, for example, *Koç v. Turkey* (dec.), no. 36686/07, 26 February 2008).

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaints under Article 5 §§ 3, 4 and 5 and Article 13 of the Convention;

Declares the remainder of the application inadmissible.

Stanley Naismith	Ineta Ziemele
Registrar	President