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

SECOND SECTION

DECISION

Application no. 10108/10
Mustafa İKE
against Turkey

The European Court of Human Rights (Second Section), sitting on 17 February 2015 as a Committee composed of:

András Sajó, *President,*
Helen Keller,
Robert Spano, *judges*
and Abel Campos, *Deputy Section Registrar,*

Having regard to the above application lodged on 25 January 2010,

Having regard to the decision of 7 February 2012,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The circumstances of the case

The applicant, Mr Mustafa İke, is a Turkish national who was born in 1980 and lives in Cizre. He is represented before the Court by Mr A.U. Ekinci, a lawyer practising in Ankara.

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

On 12 January 2010 the applicant was arrested at his home and taken into police custody on suspicion of being a member of a terrorist organisation, disseminating terrorist propaganda and having participated in an illegal demonstration.

On 15 January 2010 the Cizre Magistrates' Court in Criminal Matters placed the applicant in detention on remand after having heard him and his legal representative. The court based its decision on the strong suspicion

that the applicant had committed the alleged offences, the ongoing process of collecting evidence and the fact that the alleged offences fell within the category of offences enumerated in Article 100(3)(a) of the Code of Criminal Procedure.

On 19 January 2010 the Cizre Criminal Court of General Jurisdiction dismissed the applicant's objection to his placement in detention on the basis of the written documents, without holding an oral hearing.

COMPLAINTS

Relying on Article 5 § 4 of the Convention the applicant complained of the lack of an oral hearing in objection to his placement in detention.

THE LAW

Under Article 5 § 4 of the Convention, the applicant alleges that the proceedings by which the lawfulness of his detention on remand was reviewed failed to offer procedural guarantees such as the possibility to be heard in person at an oral hearing.

The Government maintained that there is no violation of Article 5 of the Convention as outlined in *Altınok v. Turkey* (no. 31610/08, § 54, 29 November 2011)

In the present case, the applicant was arrested and taken into police custody on 12 January 2010. On 15 January 2010 he was questioned by the public prosecutor and on the same day the Cizre Magistrates' Court in Criminal Matters placed him in detention on remand after having heard him and his legal representative.

The Court notes that the objection was dismissed by the Cizre Criminal Court of General Jurisdiction on 19 January 2010, without holding an oral hearing. Nevertheless, the applicant appeared before the trial court four days before his objection was examined by the appeal court. In these circumstances, the Court does not consider that a further oral hearing before the appeal court was required for the purposes of Article 5 § 4. Consequently, in the Court's opinion, the lack of an oral hearing during the proceedings did not jeopardize the principle of equality of arms (see *Ali Rıza Kaplan v. Turkey*, no. 24597/08, §§ 28-32, 13 November 2014, *Altınok* cited above, §§ 54-55 and *Çatal v. Turkey*, no. 26808/08, § 40, 17 April 2012).

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 19 March 2015.

Abel Campos
Deputy Registrar

András Sajó
President