

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

SECOND SECTION

DECISION

Application no. 37361/09
by Hüseyin KALKAN and Bengi YILDIZ
against Turkey

The European Court of Human Rights (Second Section), sitting on 6 December 2011 as a Chamber composed of:
Françoise Tulkens, *President,*
Danutė Jočienė,
Isabelle Berro-Lefèvre,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar*,
Having regard to the above application lodged on 24 June 2009,
Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Hüseyin Kalkan and Mr Bengi Yıldız, are Turkish nationals who were born in 1962 and 1965 and live in Batman and Ankara respectively. They are represented before the Court by Mr Oktay Bağatır, a lawyer practising in Batman.

The circumstances of the case

The facts of the case, as submitted by the applicants and as they appear from the documents submitted by them, may be summarised as follows.

At the time of the events giving rise to the application the first applicant Mr Hüseyin Kalkan was the mayor of the city of Batman and the second applicant Mr Bengi Yıldız was Member of Parliament for the same city.

On 17 February 2008 demonstrations took place in Batman city centre. A police chief named Recep from Batman police headquarters contacted the applicants and requested them to help the police to calm the demonstrators down.

The applicants agreed to the request and went to the city centre together with approximately twenty executive members of the Democratic Society Party (*Demokratik Toplum Partisi*).

When the applicants and the party members arrived in the city centre they saw approximately fifteen to twenty children running towards them, followed by a number of police officers from the Rapid Response Force (*Çevik Kuvvet*). By the time the police officers arrived where the applicants were standing, the children had already dispersed into side streets.

The police chief in charge of the police officers asked the second applicant to identify himself. When Mr Yıldız told the police chief that he was the Member of Parliament for the city, the police chief turned to other police officers and told them to hit the applicants. The police officers complied with that order and started hitting the applicants with their batons.

The first applicant, Mr Kalkan, who was hit on the head, lost consciousness and fell to the ground. His bodyguards, who were trying to protect him, were also hit by the police officers.

The second applicant was hit many times on various parts of his body, including his head and hands. At that moment the police chief Recep, who had asked the applicants to calm the demonstrators, arrived at the place and prevented the police officers from hitting the applicants any more.

On the same day the applicants went to a hospital for medical examinations. Both applicants complained of headaches and dizziness. The doctor observed oedemic swelling on the first applicant's head caused by a blow. The doctor also observed that two of the fingers of the second applicant's left hand were swollen and that their function was restricted. The doctor advised the applicants to rest for one day.

The following day the applicants met the Batman prosecutor and made official complaints against the police officers. The lawyer representing the applicants asked the prosecutor to question the witnesses and to examine the video footage of the events recorded by members of the media and the police themselves.

On 24 April 2008 the Governor of Batman refused to issue permission for the prosecution of the police officers. The Governor considered that at the time of the events the police officers had been doing their work by trying to control the demonstrators, who had been throwing stones and Molotov cocktails at them. The applicants had found themselves in the middle of the crowds. The Governor also stated that in reaching his decision

he had examined "the statements, the CCTV footage of the incidents, verbatim records of the police officers' communication over their radios, medical reports and the contents of the file".

The applicants lodged an objection to the Governor's decision. They submitted, *inter alia*, that they had not behaved in such a manner as to necessitate the use of force against them. Referring to the Convention, the applicants also argued that the investigation into their allegations had not been conducted by independent authorities. The objection was rejected on 31 October 2008 by the Diyarbakır Regional Court.

In accordance with the Diyarbakır court's decision, the Batman prosecutor decided on 1 December 2008 not to prosecute the police officers.

The prosecutor's decision was communicated to the first applicant on 22 December 2008 and to the second applicant on 24 December 2008.

COMPLAINTS

The applicants complain under Article 3 of the Convention that they were subjected to ill-treatment.

Under Article 5 of the Convention the applicants argue that their right to liberty and security of person was breached.

Finally, under Article 6 of the Convention the applicants argue that their allegations were not examined by an independent authority.

THE LAW

A. As regards the first applicant, Mr Hüseyin Kalkan

The Court notes that, as set out above, the prosecutor's decision was communicated to the first applicant on 22 December 2008.

The present application was introduced by a letter dated 20 June 2009, drawn up by the applicants' legal representative. The letter was sent to the Court by express mail service and was received at the Court on 30 June 2009. However, there is no information on the envelope or on the postal documents from which the date of postage could be established.

The information obtained by the Registry from the Turkish postal service's online mail tracking system by using the reference number of the letter shows that the letter was posted on 24 June 2009, which is more than six months from the date of communication to the first applicant of the prosecutor's decision.

Consequently, the application, in so far as it concerns the first applicant Mr Hüseyin Kalkan, must be rejected for non-compliance with the six-month rule, pursuant to Article 35 §§ 1 and 4 of the Convention.

B. As regards the complaints made by the second applicant, Mr Bengi Yıldız

Relying on Articles 3, 5 and 6 of the Convention the second applicant complained that he had been beaten up and that his complaints had not been examined by an independent authority.

The Court considers that the second applicant's complaints concerning the alleged ill-treatment and the independence of the investigation can be examined from the standpoint of Article 3 of the Convention alone. It considers that it cannot, on the basis of the case file, determine the admissibility of these complaints under Article 3 of the Convention, and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of them to the respondent Government.

Concerning the remaining complaints made by the second applicant under Articles 5 and 6 of the Convention, the Court finds that, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that these complaints should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the second applicant Mr Bengi Yıldız's complaints under Article 3 of the Convention;

Declares the remainder of the application inadmissible.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President