AS TO THE ADMISSIBILITY OF

Application No. 28773/95
by Ali IMIRGI
against Turkey

The European Commission of Human Rights (Second Chamber) sitting in private on 26 February 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 18 April 1995 by Ali IMIRGI against Turkey and registered on 27 September 1995 under file No. 28773/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Turkish citizen, born in 1954, resident in Manisa. Before the Commission he is represented by Ms. Bilge Uslu and Mr. Ibrahim Uslu, both lawyers practising in Izmir.

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

The applicant started working as an Insurance Agent of a Turkish General Insurance Joint Stock Company (the "company"), on a contract dated 8 March 1985. The applicant was dismissed on 3 October 1988. The company served notice on the applicant that he owed them 17,891,816 Turkish lira in insured customers' premiums. It claimed that the applicant had breached his fiduciary duty by keeping the premiums of the insured customers instead of sending them to the company. The applicant contested the company's allegations. Subsequently, the insurance company requested the public prosecutor to institute criminal proceedings against the applicant.

In an indictment dated 11 January 1989, the public prosecutor charged the applicant under Articles 510-522 of the Turkish Criminal Code, which stipulate that it is an offence for a person to spend, consume, deny having received or to alter for the benefit of himself or of another property entrusted to him.

On 14 September 1993 the Turgutlu First-Instance Court convicted

the applicant of an offence under Article 510 of the Turkish Criminal Code. It sentenced the applicant to one year and six months' imprisonment. It held that the applicant had breached his fiduciary duty as an insurance agent by failing to send the customers' insurance premiums to the company. Furthermore, the court relied on expert evidence which had established according to a decision of the Izmir Commercial Court that the applicant had failed to send the insurance premiums in question to the company.

The applicant appealed against this judgment on the grounds that his sentence fell to be considered under the provisions of the Insurance Control Law as opposed to Article 510 of the Turkish Criminal Code. On 13 September 1994 the Court of Cassation dismissed his appeal and upheld the decision of the first instance court.

On 21 October 1994 the Court of Cassation's decision was served on the applicant and he was sent to prison to serve his sentence. The applicant is still in prison.

COMPLAINTS

1. The applicant complains that he did not have a fair trial as guaranteed by Article 6 para. 1 of the Convention. He alleges that the domestic courts failed to consider the principal provisions of the Insurance Control Law which define the offence in question. He states that the courts ignored the provisions of Article 48 of that law, and that he was erroneously sentenced pursuant to Articles 510-522 of Turkish Criminal Code which provide for heavier penalties.
2. The applicant complains under Article 7 para. 1 of the Convention that the sentence he received was heavier than it would have been if he had been sentenced under the Insurance Control Law.

3. The applicant complains under Article 8 of the Convention that the court's decision to send him to prison infringed his private and family life as the punishment prevents him from working as an accountant and damages his social status.

THE LAW

1. The applicant complains that he did not have a fair trial as guaranteed by Article 6 para. 1 (Art. 6-1) of the Convention. He alleges that the domestic courts failed to consider the provisions of the Insurance Control Law which defines the offence in question. He states that the courts ignored the provisions of Article 48 of the above-mentioned Law, and that he was erroneously sentenced pursuant to Articles 510-522 of the Turkish Criminal Code which provide for heavier penalties. The applicant also complains, on the basis of the same facts, of a breach of Article 7 (Art. 7) of the Convention.

The Commission recalls that under Article 19 (Art. 19) of the Convention its sole task is to ensure observance of the engagements undertaken by the High Contracting Parties in the Convention. It is not competent to examine applications concerning errors of law or fact allegedly committed by the competent national authorities, to whom it falls, in the first place, to interpret and apply domestic law (No. 19890/92, Dec. 3.5.93, D.R. 74 p. 239).

In this case, the Commission notes that the applicant's complaints concern the national courts' evaluation of the facts and evidence and the interpretation of the domestic law. The courts held that the provisions of the Turkish Criminal Code were applicable to the applicant's offence. The Commission considers it irrelevant whether the applicant's behaviour also came within the scope of the Insurance Control Law. The Commission finds no element which would allow it to conclude that the courts established the facts in an arbitrary or unreasonable manner or that they misinterpreted the applicable provisions of the criminal law. Therefore, there is no appearance that

the applicant's conviction was not in conformity with Articles 6 and 7 (Art. 6, 7) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains under Article 8 (Art. 8) of the Convention that the First Instance Court's decision to send him to prison infringed his private and family life as the punishment prevents him from working as an accountant and damages his social status.

The Commission recalls that when a person is arrested and detained in conformity with Article 5 para. 1 (Art. 5-1) of the Convention, such arrest and detention must necessarily imply a disruption of private life but this inevitable consequence of detention cannot in principle be regarded as an interference with the right to respect for private life protected by Article 8 (Art. 8) of the Convention (No. 10427/92, Dec. 12.5.86, D.R. 47 p. 85).

In the present case the Commission notes that the applicant's detention following his conviction under provisions of the Turkish Criminal Code was in conformity with Article 5 para. 1 (a) (Art. 5-1-a) of the Convention and there is no indication that there has been any interference with the applicant's rights under Article 8 (Art. 8) of the Convention going beyond the normal effects of criminal detention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber