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

SECOND SECTION

DECISION

Application no. 35199/07
Nedim MISIRLI
against Turkey

The European Court of Human Rights (Second Section), sitting on 19 November 2013 as a Committee composed of:

Peer Lorenzen, *President,*
András Sajó,
Nebojša Vučinić, *judges,*

and Seçkin Erel, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 10 August 2007,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Nedim Mısırlı, is a Turkish national, who was born in 1948 and is currently serving his prison sentence in Karabük Prison.

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

In 2003, the Ministry of Finance carried out an investigation in the Gaziantep Provincial Treasury Department. At the time of the events the applicant was the head of this department and suspected of bribery. A contravention report was issued against the applicant. The report concluded that criminal proceedings should be initiated.

On 1 April 2004 the Inspection Board of Ministry of Finance (*Maliye Bakanlığı Teftiş Kurulu* – "the Board"), after having questioned several officials and civilians and audited the relevant companies' accounts, issued an investigation report claiming, *inter alia*, that the applicant took bribes during his term in office. The report indicated that criminal proceedings should be initiated.

On 15 April 2004 the Gaziantep public prosecutor filed an indictment against the applicant for bribery, together with two other persons.

On 30 June 2004 the Gaziantep Assize Court "the court" heard Y.S. as a witness. In his statements, Y.S. stated that he had been working at the company ("YST Ltd.") owned by the applicant's co-accused, M.S.H., at the material time. The applicant had been coming to M.S.H.'s office especially on tax refund days. He had given money to the applicant as a bribe on several occasions at M.S.H.'s request. He further stated that the information about the money given to the applicant was recorded in the company's ledger in handwriting. At the end of the hearing the assize court filed a criminal complaint against Y.S.

On an unspecified date the Gaziantep public prosecutor filed an additional indictment against Y.S. charging him with bribery.

On 4 August 2004 the court took a witness statement from M.Ş.Ç. He stated that he had been the chauffeur of the applicant's co-accused, M.S.H., and he had been driving the applicant to M.S.H.'s office three or four times a week on tax refund days.

On the same day Y.S. gave a statement repeating his former statements. He added that he had given money to the applicant in an envelope on several occasions, but these were not intended to be bribes.

On 13 September 2004 the court called M.Y., department chief of the relevant tax office at the material time, as a witness. He stated that the applicant had been visiting the tax office on the YST Ltd.'s tax refund days. When the applicant was present, the deputy manager of the tax office had requested that he finish the YST Ltd.'s work before the others.

During the hearings the applicant was represented by his lawyer and they were granted the opportunity to submit their arguments against the witnesses. Later on the court heard six other witnesses.

On an unspecified date an expert's report was submitted to the court revealing that the applicant had been given 61,535,432,000 Turkish liras.

On 17 November 2005 the court found the applicant guilty as charged and sentenced him to six years and three months' imprisonment. The court mainly relied on the statements of Y.S., M.Ş.Ç. and M.Y., as well as the unofficial ledger of the relevant company and the expert's report.

On 26 February 2007 the Court of Cassation upheld this judgment.

COMPLAINTS

Without relying on any Article of the Convention, the applicant complained that he had been denied a fair hearing. In this respect, the applicant maintained firstly that the statements of Y.S., M.Ş.Ç. and M.Y, which were allegedly contradictory, should not have been taken into account by the first-instance court. He further contended that he had not been able to cross-examine the prosecution witnesses as they had not been

heard before the first-instance court. The applicant also complained that the court had failed to conduct a graphological examination of the handwriting on the unofficial ledger of the relevant company. The applicant lastly asserted that the court erred in the interpretation of domestic law and that he should have been acquitted.

THE LAW

The applicant, having alleged several deficiencies in the criminal proceedings against him, complained that he had not had a fair hearing before the national courts.

The Court observes that the applicant's complaints essentially concern the assessment of the evidence and application of the domestic law by the national courts. Accordingly, it will examine these complaints from the standpoint of Article 6 § 1 of the Convention.

The Court recalls that it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The admissibility of evidence and related questions are primarily matters for regulation by national law and it is, in principle, for national courts to assess the evidence before them. The Court's task is not to examine whether the applicant was guilty or innocent of the offences for which he was convicted, but to ascertain whether the proceedings, as a whole, including the way in which the evidence was taken, were fair (see *Schenk v. Switzerland*, 12 July 1988, § 46, Series A no. 140, and *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999‑I).

In the present case, the Court notes that the applicant had the benefit of adversarial proceedings. He was represented both at his trial and on appeal by his lawyer. All the witnesses were heard in the presence of the applicant and his lawyer and he had the opportunity to challenge the allegations against him. The Court further notes that the first-instance court heard several witnesses and in its judgment mainly relied on the unofficial ledger of the relevant company, the expert's report and the statements of Y.S., M.Ş.Ç. and M.Y. In its decision at the appeal stage, the Court of Cassation endorsed the findings of the first-instance court and upheld the legal reasoning given by that court in so far as it did not conflict with its own considerations. The Court finds no indication that the national courts acted arbitrarily or otherwise exceeded their margin of appreciation in this respect.

For the above reasons the Court finds that the applicant's complaints disclose no appearance of a violation of Article 6 § 1 of the Convention. It

follows therefore that the application is inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Seçkin Erel	Peer Lorenzen
Acting Deputy Registrar	President