

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

SECOND SECTION

DECISION

Application no. 31446/09
İsmet TUNCER
against Turkey

The European Court of Human Rights (Second Section), sitting on 22 January 2013 as a Chamber composed of:
Guido Raimondi, *President,*
Danutė Jočienė,
Peer Lorenzen,
András Sajó,
Işıl Karakaş,
Nebojša Vučinić,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*
Having regard to the above application lodged on 2 June 2009,

THE FACTS

The applicant, Mr İsmet Tuncer, is a Turkish national who was born in 1968 and lives in Istanbul. He is represented before the Court by Mrs G. Altay and Mr H. Karakuş, lawyers practising in Istanbul.

At the time of the events, the applicant was a public prosecutor at the Yeşilhisar Court in Kayseri.

1. Disciplinary proceedings

On 6 December 1999 the Justice Inspection Office at the Ministry of Justice authorised a justice inspector (*adalet müfettişi*) to initiate a

disciplinary investigation into events that had allegedly occurred at the Yeşilhisar Court. The applicant was accused of bribery and forgery of official documents.

On 17 April 2000 the Supreme Council of Judges and Prosecutors ("Supreme Council"), having assessed the evidence in the case file, concluded that the allegations against the applicant were well-founded and that it was not necessary to wait for the outcome of the prosecution before removing the applicant from office.

The applicant's subsequent appeal to the Supreme Council and an objection lodged before the Objections Board were rejected on 23 October 2000 and 1 March 2001 respectively. The final decision of the Objections Board was published in the official gazette on 21 August 2001.

2. Criminal proceedings

On 23 February 2000 the Kayseri public prosecutor filed an indictment accusing the applicant, along with another person, with bribery and forgery of official documents under Articles 211 and 339 of the Criminal Code, as in force at the time.

On 31 March 2000 the Kayseri Assize Court issued a decision to institute criminal proceedings against the applicant in the Develi Assize Court.

At the first hearing on 23 May 2000, the court ordered the applicant's pre-trial detention.

At the hearing of 20 June 2000, the applicant asked the court to hear a certain witness who would testify to the hostility between the applicant and another witness, M.G. His request was dismissed by the court on the ground that the relationship between them was sufficiently clear.

On 25 October 2000 the Kayseri Assize Court, where the judge R.Ü. was presiding, ordered the institution of criminal proceedings against lawyers C.Y. and A.S. in the Develi Assize Court. On 14 November 2000 the case was joined with that of the applicant because the two cases were linked.

On 22 December 2000 the applicant was released pending trial.

On 19 April 2001 the Develi Assize Court issued a decision of lack of jurisdiction, finding it established that the accused lawyers had been in contact with the judge and the public prosecutor, and had committed the alleged offence of forgery and bribery. The court pointed out that the accused had formed an organisation in order to commit the alleged offence. It therefore concluded that the subject matter of the case fell within the competence of the State Security Courts.

On an unspecified date, the Court of Cassation quashed the decision and referred the case back to the trial court.

On 25 March 2004 the Develi Assize Court convicted the applicant as charged and sentenced him to terms of ten years and thirteen months' imprisonment. The court also decided that C.Y. and A.S.'s case be separated

and registered under a new reference number, as there were still a number of irregularities in their files.

On 9 June 2005 the Court of Cassation quashed the decision and ordered the re-examination of the case file in the light of the new Criminal Code. By a decision of the Supreme Council meanwhile the Develi Assize Court was abolished. The case was transferred to the Kayseri Assize Court, where R.Ü. was the presiding judge.

At the hearing of 1 March 2006, the applicant reiterated his request that a certain witness be heard. His request was once again rejected by the court on the same grounds.

On 7 June 2006 the Kayseri Assize Court sentenced the applicant to a total of nine years and one month of imprisonment.

On 4 December 2008 the Court of Cassation upheld the judgment.

COMPLAINTS

The applicant complained under Article 6 of the Convention about the length of the criminal proceedings, which lasted approximately eight years and six months. In addition, he asserted that the period of over two and half years before the Court of Cassation had not been reasonable.

The applicant further maintained under Article 6 that the judges sitting at the Kayseri Assize Court had lacked impartiality, since one of them had been involved in the investigation proceedings. He also argued that the comments of certain judges in the trial court and the wording of their decisions demonstrated their bias against him. In this respect, the applicant mentioned the decision of lack of jurisdiction dated 19 April 2001.

The applicant further complained, under Article 6 § 2 of the Convention, that the decision of the Supreme Council had violated his right to the presumption of innocence, as the decision concerning his removal from office had been given without waiting for the outcome of the criminal proceedings. In this regard, he contended that the trial court could have been influenced by the Supreme Council's decision.

The applicant contended under Article 6 § 3 of the Convention that he had not been reminded of his rights – in particular, the right to a lawyer and the right to remain silent – while his statements were being taken by the justice inspector. He further complained about the absence of a court clerk during the interview, which resulted in the minutes being taken unilaterally. The applicant also alleged that the court had not heard evidence from a witness whose testimony had been essential for his case.

The applicant complained under Article 13 of the Convention of the lack of an effective remedy to challenge the decisions of the Supreme Council.

In his letter of 19 September 2011, invoking Article 6 and 13 of the Convention, the applicant further complained about the release from detention of a certain suspect, M.K., who had been important for his case.

THE LAW

1. The applicant complained that the length of the criminal proceedings against him had been incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention.

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

2. The applicant alleged under Article 6 of the Convention that the judges presiding at the trial court were not impartial.

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

3. The applicant complained under Article 6 §§ 1 and 3 (c) of the Convention that he had not been reminded of his right to a lawyer or his right to remain silent when his statements had been taken by the justice inspector. He also complained that the court clerk had been absent during the interview, as a result of which the minutes were taken unilaterally.

As regards the allegation that the applicant was not reminded of his rights, as well as the complaint concerning the absence of the court clerk, the Court notes that at the material time, there were no statutory restrictions in respect of legal assistance for proceedings before the assize courts (contrast *Salduz v. Turkey* [GC], no. 36391/02, 27 November 2008). The Court further observes that the applicant has not raised those issues before the domestic authorities. Moreover, he neither retracted his statements nor challenged their accuracy. On the contrary, during the first hearing he declined legal representation. Consequently, and given that the applicant was a public prosecutor, the Court considers that the fairness of his trial was not prejudiced on account of the fact that he was not reminded of his rights and that the court clerk was absent during the interview.

The Court holds that this part of the application should be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

4. Relying on Article 6 § 2 of the Convention, the applicant alleged that the Supreme Council had violated his right to the presumption of innocence, as the decision concerning his removal from office had been given without

waiting for the outcome of the criminal proceedings. The applicant further maintained, under Article 13 of the Convention in conjunction with Article 6 § 2, that there had been no effective remedy whereby he could have challenged the Supreme Council's decision.

The Court notes that the applicant's appeal to the Supreme Council and the objection that he lodged before the Objections Board were rejected on 23 October 2000 and 1 March 2001 respectively. The final decision of the Objections Board was published in the official gazette on 21 August 2001. Given that the application was lodged with the Court on 2 June 2009, the Court considers that this part of the application should be rejected as being lodged out of the six-month time-limit within the meaning of Article 35 §§ 1 and 4 of the Convention.

5. The applicant submitted under Article 6 § 3 of the Convention that the court had not heard evidence from a certain witness who would have testified to the hostility between the applicant and another witness.

The Court observes that Article 6 does not grant the accused an unlimited right to secure the appearance of a witness in court. It is normally for the national courts to decide whether it is necessary or advisable to hear a witness (see, among other authorities, *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V). The essential aim of Article 6, as indicated by the words "under the same conditions" in paragraph (d), is full equality of arms in the matter (see *Svinarenkov v. Estonia* (dec.), no. 42551/98, 15 February 2000).

The Court observes that the applicant's request that the court hear the witness who allegedly would have testified to the hostility between the applicant and another witness, M.G., was dismissed by the court on a specific and clear ground: that the relationship between them was already sufficiently clear. It follows that this part of the application should be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

6. In his letter of 19 September 2011, relying on Articles 6 and 13 of the Convention, the applicant further complained about the release from detention of a certain suspect, M.K., who had been important for his case.

The Court considers that this part of the application is unsubstantiated and that therefore it must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaints concerning the length of the proceedings and the lack of independence and impartiality of the trial court;

Declares the remainder of the application inadmissible.

Stanley Naismith
Registrar

Guido Raimondi
President