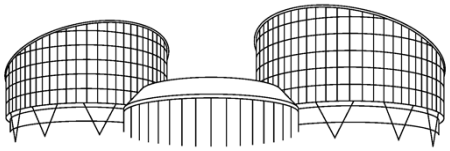

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF DELİKTAŞ v. TÜRKİYE

(Application no. 25852/18)

JUDGMENT

Art 6 § 1 (criminal) • Oral hearing • Regional Court of Appeal's decision to dispense with a hearing without addressing applicant's request in that regard • Appellate court called upon to examine applicant's case as to both the facts and law and required to make a full assessment of his guilt or innocence • Issues to be examined not such as to preclude from the outset the need to hold a hearing • No circumstances justifying the lack of an oral hearing before it

Prepared by the Registry. Does not bind the Court.

STRASBOURG

12 December 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Deliktaş v. Türkiye,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Pauliine Koskelo,
Saadet Yüksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Davor Derenčinović*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 25852/18) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Yunus Deliktaş ("the applicant"), on 3 May 2018;

the decision to give notice to the Turkish Government ("the Government") of the complaints concerning the alleged unfairness of criminal proceedings owing to the absence of a hearing at the appeal stage and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 21 November 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns, under Article 6 § 1 of the Convention, the alleged unfairness of the criminal proceedings against the applicant on account of the absence of a hearing at the appellate stage.

THE FACTS

2. The applicant was born in 1983 and lives in Malatya. The applicant was represented by Mr B. Banazılı, a lawyer practising in Malatya.

3. The Government were represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

4. The facts of the case may be summarised as follows.

I. ADMINISTRATIVE COMPLAINT LODGED AGAINST THE APPLICANT AND OTHERS FOR ASKING FOR BRIBES

5. On 25 October 2015 a certain F.S. and his brother R.S. made a complaint against M.Ç., S.Ş. and İ.Y. ("the officers") and the applicant, all of

whom were forest protection officers at the material time, to the Çaydurt branch of the Aladağ Directorate of Forest Management for the offence of bribery. According to an official record drawn up by R.A. and S.Ç. (the managers of the Directorate in question), F.S. attested that on the evening of 22 October 2015, while he and his brother had been transporting timber in the trailer of his tractor, they had come across the officers and the applicant, who had been on patrol duty. They had stopped F.S. and his brother R.S. to inspect the origin of the timber, adding that they would draw up an official record in respect of the timber and seize the tractor. F.S. further stated that after the officers and the applicant had made a telephone call to their superiors and had talked among themselves, the officer S.Ş. had told him that they would let him go in exchange for 2,000 Turkish liras (TRY) (approximately 629 euros (EUR) at the time). When F.S. had offered them a sheep instead, officer İ.Y. had insisted on the sum of TRY 2,000, whereas officer M.Ç. had told him to pay TRY 1,000 instead. F.S. had told them that he would fetch the money for them from his house and suggested that they meet him next to the highway, where he had later given officer S.Ş. TRY 400 and had told him that he would give him the rest of the money another day.

II. ADMINISTRATIVE INQUIRY INTO ALLEGATIONS OF BRIBE

6. On different dates in November 2015 F.S., R.S., the applicant, M.G. (the driver of the truck in which they had been patrolling on the day of the incident), their superior officers R.A. and S.Ç., and B.C. (a forest protection officer at the Çaydurt timber warehouse) all made statements to an inspector in the context of an administrative inquiry initiated into the incident by the Bolu Regional Directorate of Forests. In his statements of 24 November 2015, the applicant maintained that he and other officers had stopped F.S. and R.S. and that they had got out of the truck to inspect the trailer. Since it had been dark, the officers had told the applicant to get a torch, which he had done. Upon inspection, the officers had suspected that the timber might have been collected unlawfully and officers M.Ç. and S.Ş. had made telephone calls to their superior S.Ç. and sought instructions on how to proceed. However, the applicant insisted that at that point he had gone back in the truck and sat with the driver M.G. and that he had not witnessed what had happened between the officers and F.S. and R.S. The applicant further attested that subsequently the tractor had left the scene and that they had then driven towards a place near the highway where officer S.Ş. had got out of the truck and had met F.S. At that point, officer M.Ç. had asked M.G. to drive to an abandoned quarry that was situated one kilometre away. After a short while, they had returned and picked up officer S.Ş.

7. On 18 November 2015 B.C. made statements in his capacity as a witness in the context of the same administrative inquiry and stated that on 26 October 2015 F.S. had visited the Çaydurt timber warehouse, had asked

him for the mobile telephone number of officer M.Ç. and had inquired as to the whereabouts of officers S.Ş., İ.Y. and the applicant. However, the fact that F.S. had asked for information about all the officers had aroused B.C.'s suspicion as to F.S.'s intentions. Subsequently, when B.C. raised this issue with F.S., the latter had recounted the incident that had taken place four days earlier and had explained that the reason he had been looking for the officers was to pay them the remaining sum agreed for letting his tractor go.

8. B.C. further attested that on 27 October 2015 M.G. had recounted the incident to him again, stating that the applicant had stayed in the truck but that the officers had later given him TRY 100 (approximately EUR 31,45 at the time). When B.C. had asked M.G. whether the applicant had asked the officers why they had given him the money, M.G. had stated that the applicant was not a dummy and he must have understood what was going on ("*eşek değil ya anlamıştır*").

III. CRIMINAL PROCEEDINGS BEFORE THE BOLU ASSIZE COURT

9. On 12 February 2016 the Bolu public prosecutor filed a bill of indictment against the officers, the applicant and F.S. with the Bolu Assize Court, charging the officers and the applicant under Article 252 of the Criminal Code with taking a bribe on the basis of the incident of 22 October 2015 and F.S. with offering bribes under the same provision.

10. At the first hearing, which was held on 21 April 2016, the applicant, the officers and F.S. gave evidence as defendants and M.G., B.C., R.A. and S.Ç. in their capacity as witnesses. While F.S. largely reiterated his earlier statements, he also stated that the applicant had said that they could not seize the tractor without an order from the public prosecutor, despite having witnessed and heard the negotiations between the other officers and himself. According to F.S., the applicant had not been directly involved in the actions of the other officers and had remained outside the "money business". F.S. further attested that he did not know whether the applicant had subsequently taken a share of the bribe. When F.S. stated that the applicant had not been in the truck during the negotiations but that he had been wandering around, the applicant objected, insisting that he had been inside the truck and that he had not heard the discussion or any negotiations between F.S. and the other officers. The witness M.G. stated that he and the applicant had been sitting in the truck during the incident, and that they had got out of it to give the officers a torch. While he himself had immediately returned to the truck, he attested that the applicant had remained with the officers for about three to five minutes. The witness B.C. reiterated his earlier statement, adding that on 26 October 2015 F.S. had asked him where the officers and the applicant were, mentioning their names one by one. At this point, the witness M.G. intervened and stated that the other officers had not given any money to the applicant, adding that he had discussed with B.C. a different incident

involving the payment of TRY 100 in which the applicant had allegedly been involved. In their statements before the trial court, the applicant and the officers denied having taken a bribe.

11. On 29 November 2016 the Bolu Assize Court convicted the defendants, except for F.S., of accepting a bribe and sentenced them to three years and four months' imprisonment, basing its decision largely on the first version of the events as recounted by F.S. to the Çaydurt branch of the Aladağ Directorate of Forest Management (see paragraph 5 above). The trial court decided not to impose a sentence (*ceza verilmesine yer olmadığı kararı*) on F.S. In respect of the applicant's claims that he had not acted with the other officers and that he had remained inside the truck with M.G. during the incident, the trial court held that M.G. had stated that the applicant had been with the officers when they had first talked to F.S. and that after M.G. and the applicant had given the officers a torch, the applicant had stayed with the officers for some while longer. The trial court went on to hold that according to the statements of the witness B.C., M.G. had told B.C. that the officers had given TRY 100 to the applicant. The trial court noted that F.S. had also stated that he had been asked for money when all the officers, including the applicant, had been present. The trial court lastly attached weight to the statements of B.C. to the effect that F.S. had asked him where each and every one of the officers, including the applicant, were, taking the view that if the applicant had been present at the office he would have received the remainder of the bribe, since it would have been illogical for F.S. to give it to an individual who had not been involved in the incident. In view of the above, the trial court dismissed the applicant's contention that he had not been involved in the bribery.

IV. PROCEEDINGS BEFORE THE ANKARA REGIONAL COURT OF APPEAL

12. On 17 January 2017 the applicant's lawyer M.Y.T. appealed against his client's conviction, submitting, among other things, that there was no tangible evidence capable of showing that the applicant had committed the offence imputed to him, since none of the individuals had made a credible claim that he had taken a bribe. In that connection, the lawyer submitted that the applicant had been in the truck with the driver M.G. when the officers and F.S. had talked together and that he had not known what they had been talking about. In support of that contention, the applicant's lawyer relied on the statements made by F.S., who had explicitly stated that the applicant had not taken part in the officers' actions and had remained outside the "money business", adding that he had not known whether the applicant had received a share of the bribe money. In the same vein, reliance was also placed on the statements made by M.G., who had attested that the applicant had sat with him in the truck the entire time, that he had only gone out and given the

officers a torch when they had asked for one and that he had then returned to the truck. Furthermore, as regards the statements made by B.C. to the effect that the applicant had received his share of the bribe money after the incident, the lawyer emphasised that M.G. (from whom B.C. had learned of the incident in question) had attested that he had not seen the officers giving money to the applicant but that he had not known what had happened inside the truck. In the lawyer's view, the trial court's omission to include the trial testimony of M.G. in its reasoned judgment had resulted in an erroneous assessment of the case. Accordingly, the lawyer averred that neither the *actus reus* nor the *mens rea* of the offence of bribery had been made out and asked the regional appeal court to set aside the first-instance court's judgment and to re-examine the case by holding a hearing, and if that was not possible then to quash the judgment and to remit it to the trial court for a fresh examination. In addition to the above, the top right-hand corner of the first page of the appeal bore the following phrase: "hearing requested".

13. By a submission dated 17 January 2017 the applicant's other lawyer, S.B., also lodged an appeal in which he argued, among other things, that the trial court's judgment was unlawful because it had been based on hearsay evidence instead of eyewitness testimony. In that connection, the lawyer emphasised the evidence given by F.S. during the trial by which he had attested that the applicant had not been directly involved in the incident and had stayed out of the "money business". F.S. had further stated that despite having witnessed the incident and the request made by the other officers, the applicant had told the officers that they could not seize the truck without obtaining an order from the public prosecutor. The lawyer further pointed out that the statements given by F.S. throughout the different stages of the proceedings had shown that the applicant had not been involved in asking for bribes. Similarly, given that F.S. had mentioned in his first statement to the inspector that the only one of the men he had known was S.Ş., it would have been strange for him to ask a person he had not known to let him pay the rest of the money the following day. In any event, the trial court's conclusion to that effect had not had a sound basis. The lawyer further referred to the statements of the driver M.G., who had attested that the applicant had been inside the truck for most of the incident, save for one occasion when he and the applicant had fetched a torch for the other officers and then returned to the truck together. However, were the court to opt for finding the applicant criminally liable, the lawyer asked that it reclassify the offence as abuse of official duties (*görevi kötüye kullanma*) on the basis that the applicant's mere presence at the incident and his passive role therein could not be regarded as constituting the *actus reus* of the offence of bribery. In addition to the above, the top centre of the first page of the appeal bore the following phrase: "hearing requested".

14. On 30 May 2017 the Fifth Criminal Division of the Ankara Regional Court of Appeal (*Ankara Bölge Adliye Mahkemesi*) dismissed the appeals "on

the merits" in accordance with the first sentence of Article 280 § 1 (a) and Article 286 of the Code of Criminal Procedure ("the CCP"), after finding no grounds to dismiss the defendants' appeals for procedural reasons. The appellate court went on to hold that the steps carried out throughout the proceedings were in compliance with the law, that the evidence had been specified and subjected to discussion in a reasoned judgment, that the personal conviction of the judges had been based on proven facts that were in line with the documents and information in the file, that it had been established that the actions imputed to the applicants had been committed by them, that the type of offence corresponding to the disputed actions had been correctly identified and that the sentence had been correctly determined. Having thus discerned no unlawfulness in terms of procedure and the merits in the trial court's judgment, the appellate court dismissed the appeals lodged against it.

15. On 30 June 2017 the applicant was dismissed from the public service as a result of his conviction becoming final.

V. INDIVIDUAL APPLICATION TO THE CONSTITUTIONAL COURT

16. By a letter dated 10 July 2017, the applicant lodged an individual application with the Constitutional Court whereby he complained, among other things, of a breach of his right to a fair trial owing to the domestic courts' alleged failure to deliver a reasoned judgment in their decisions to convict him and their failure to hold a hearing on his appeal, which in his view meant that they had not undertaken an effective investigation, contrary to Article 13 of the Convention.

VI. THE APPLICANT'S ATTEMPT TO HAVE RECOURSE TO THE EXTRAORDINARY REMEDY UNDER ARTICLE 308/A OF THE CCP

17. On 20 September 2017 the applicant availed himself of the extraordinary remedy provided for in Article 308/A of the CCP by asking the Chief Public Prosecutor at the Ankara Regional Court of Appeal to lodge an objection against the above-mentioned judgment of the Fifth Criminal Division of the Ankara Regional Court of Appeal, seeking that it be reconsidered and quashed by the same Division. In his request, the applicant essentially reiterated the submissions raised in the appeals lodged on his behalf without complaining of the absence of a hearing. On 11 October 2017 the public prosecutor attached to the Ankara Regional Court of Appeal dismissed the request.

VII. THE CONSTITUTIONAL COURT'S JUDGMENT

18. 27 October 2017 the Constitutional Court delivered its decision, in which it examined the applicant's complaints under Article 6 of the Convention under two headings, namely (i) the allegation concerning the right to a reasoned judgment, and (ii) the allegation that the outcome of his trial had been unjustified, and declared them inadmissible as being manifestly ill-founded, for the following reasons. As to item (i), the Constitutional Court found that the trial court's decision to convict the applicant had contained sufficient reasoning and had been delivered after a discussion of all the accusations and defence submissions that could have had an impact the outcome of the case and had followed a hearing that was open to the public. Given that the trial court's judgment and the reasons given for it had been endorsed in the appellate review, the absence of a violation of the right to a reasoned judgment was manifest. As to item (ii), the Constitutional Court took the view that the applicant's arguments concerned the assessment of evidence and the application of domestic law; it was thus of a fourth-instance nature and should therefore be declared inadmissible, given that the domestic courts' decisions did not contain any manifest error of assessment or arbitrariness. The Constitutional Court's judgment was served on the applicant on 3 November 2017.

VIII. PETITION TO THE COMMUNICATION CENTRE OF THE PRESIDENCY OF THE REPUBLIC OF TÜRKİYE

19. On 7 February 2021 the applicant lodged a request with the Communication Centre of the Presidency of the Republic of Türkiye (CİMER) in the form of an email in which he made the following statement:

> "My dear President, God bless you with good health. I am a public servant who was dismissed [from service] as a result of a plot. ... In every act of worship [Salah] and prayer, I sincerely wondered when it would be my turn and when justice would be done. I have been waiting patiently for five years without compromising any of my nationalistic feelings, which feelings were sought to be eliminated. Five years ago, I lodged a case with the [Court]. It was accepted. It is [before] the Department of Human Rights of the Ministry of Justice and the application number is 25852/18. The [Court] offered a friendly settlement [and] I am willing to demonstrate that I side with my State. What I ask from you, my esteemed statesmen, is to assist me in finding a solution to this [issue]. Reiterating that I side with my State, I ask you to redress the injustice that I have been experiencing for five years."

RELEVANT LEGAL FRAMEWORK

20. Regional courts of appeal, which were established under Law no. 5235 on the Establishment, Powers and Duties of (Civil and Criminal) Courts of First Instance and Regional Courts of Appeal, started operating as

of 20 July 2016 in accordance with a decision of the Ministry of Justice published in the Official Gazette on 7 November 2015.

21. Article 280 of the Code of Criminal Procedure, entitled "Assessment and prosecution at the regional court[s] of appeal", as applicable at the time the applicant's appeal was examined, read as follows:

> "(1) Following the examination of the file and the evidence submitted therewith, the regional court of appeal shall decide to:
>
> (a) [(i)] dismiss the appeal on the merits, if it finds that the first-instance court's decision contains no unlawfulness as to the procedure or merits, that the evidence and the steps [carried out throughout the proceedings] were not flawed and that evidence was properly assessed, or [(ii)] dismiss the appeal on the merits by correcting the unlawfulness, in the case of the existence of violations enumerated in sub-paragraph (c) of paragraph 1 of Article 303;
>
> (b) quash the judgment, if it finds that the first-instance court's judgment contains a ground [for a finding of] unlawfulness as specified in Article 289, and remit the case file to the first-instance court whose judgment has been quashed or to another first-instance court within its jurisdiction which it may find appropriate, for the purpose of a fresh assessment and judgment;
>
> (c) in other cases, to assess the case afresh and initiate the steps for the preparation of the hearing, after taking the necessary measures.
>
> (2) At the end of the hearing, the regional court of appeal shall dismiss the appeal on the merits or give a fresh judgment setting aside the decision of the first-instance court."

22. Article 308/A of the Code of Criminal Procedure, entitled "Power of the Chief Public Prosecutor's Office at the Regional Court of Appeal to lodge an objection", as applicable at the material time, read as follows:

> "The Chief Public Prosecutor's Office at the Regional Court of Appeal may, of its own motion or upon request, lodge an objection against a final decision of the criminal divisions of the Court of Cassation with the division which handed down the judgment [in question] within thirty days of being served with it. In respect of an objection [lodged] for the benefit of an accused, no time-limit shall be applied. The division [in question] shall examine the objection within the shortest possible time and shall rectify its decision if it upholds [the objection]; otherwise, it shall dismiss the objection. Decisions concerning dismissal of an objection are final."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

23. The applicant complained that he had not had a fair trial owing to the failure of the appellate court to hold a hearing despite his request to that effect. Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by [a] ... tribunal ..."

A. Admissibility

1. Alleged abuse of the right of application

24. The Government urged the Court to declare the application inadmissible as an abuse of the right of petition, contending that the applicant had manifestly breached his obligation to respect the confidentiality of the friendly-settlement negotiations, since he had mentioned them in an email to the Communication Centre of the Presidency of the Republic of Türkiye ("CİMER"). The Government submitted that in that email the applicant had stated that "he was in favour of the friendly-settlement process set in motion by the Court and sought to provide information [about] whether the Government would compensate his loss" (see paragraph 19 above).

25. The applicant did not comment on this issue.

26. The Court reiterates that under Article 39 § 2 of the Convention and Rule 62 § 2 of the Rules of Court, negotiations with a view to securing a friendly settlement are confidential. The rule of confidentiality is absolute and does not allow for individual assessment of how much detail has been disclosed (see *Ausad Valimised MTÜ v. Estonia* (dec.), no. 40631/14, § 18, 27 September 2016, with further references). Indeed, Article 39 § 2 of the Convention and Rule 62 § 2 prohibit the parties from making public information concerning friendly-settlement negotiations, whether through the media, or by a letter likely to be read by a significant number of people or by any other means (see *Tsonev v. Bulgaria* (dec.), no. 44885/10, § 26, 8 December 2015). A breach of the rule of confidentiality may, in certain circumstances, justify the conclusion that an application is inadmissible on the grounds of abuse of the right of application (see *Eskerkhanov and Others v. Russia*, nos. 18496/16 and 2 others, § 24, 25 July 2017, with further references).

27. That being said, this rule must always be interpreted in the light of its general purpose, namely facilitating a friendly settlement by ensuring that information provided in the course of negotiations is not revealed and made public (see *Čapský and Jeschkeová v. the Czech Republic* (just satisfaction), nos. 25784/09 and 36002/09, § 18, 9 February 2017) and by protecting the parties and the Court against potential pressure (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 68, 15 September 2009).

28. In the present case, the Court notes that the applicant did not disclose to the media any information as regards the friendly-settlement negotiations, such as the amount offered, or any other specific information related thereto. Furthermore, the Government did not argue that the applicant's request made via CİMER, an electronic portal whereby anyone may submit a request or a complaint via electronic means directly to CİMER, had either been read or was likely to be read by a large number of people, and the Court is not in a position to ascertain whether either of these possibilities materialised in the present case. Lastly, and given the fact that the applicant's request was

forwarded first to the Ministry of Justice and then to its Department of Human Rights, the Court cannot conclude that it was made public.

29. The Court is cautious of the serious nature of any breach of the confidentiality rule as well as the consequences such breach may entail on an application. However, without taking a position on the question as to whether the applicant breached the rule of confidentiality and having regard to the foregoing considerations as well as the fact that the applicant did not divulge any details of the friendly-settlement negotiations but merely mentioned the existence of a friendly-settlement offer he had received and his willingness to accept it in an electronic message submitted via an electronic portal belonging to the State and subsequently forwarded to the Ministry of Justice, the Court considers that a decision to declare the application inadmissible as an abuse of the right of application would be disproportionate (see *Lesnina Veletrgovina d.o.o. v. the former Yugoslav Republic of Macedonia* (dec.), no. 37619/04, 2 March 2010, and compare *Hadrabová and Others v. the Czech Republic* (dec.), nos. 42165/02 and 466/03, 25 September 2007). Accordingly, the Government's preliminary objection must be dismissed.

2. Allegedly manifestly ill-founded nature of the application

30. The Government submitted that in his appeal the applicant had failed to explain why a hearing at the appeal stage was necessary, his request to that effect being limited to the mere phrase "a hearing is requested" written on the top right-hand corner of his appeal. In fact, the applicant had neither given any reasons for that request either before the Constitutional Court or before the Court, nor had he requested in his appeal that certain witnesses be examined again. Accordingly, the Government argued that the application should be rejected as being manifestly ill-founded in the light of *Furuholmen v. Norway* ((dec.), no. 53349/08, 18 March 2010), where the Court had found that the applicant had failed to submit any convincing argument in support of his request to be given an opportunity to make oral submissions before the Supreme Court.

31. The Government further argued that even though the applicant had availed himself of the remedy provided for in Article 308/A of the CCP, in that he had requested the Office of the Chief Public Prosecutor at the Regional Court of Appeal to lodge an objection against the judgment of the Ankara Regional Court of Appeal, he had failed to raise any objection concerning the absence of a hearing. In the Government's view, the remedy in question was similar to the one laid down in Article 308 of the CCP, namely the power of the Chief Public Prosecutor at the Court of Cassation to lodge an objection, and that the failure to object to the absence of a hearing meant that the applicant had withdrawn his request that a hearing be held in the review of his case. In view of the above, the Government urged the Court to declare the application inadmissible as being manifestly ill-founded.

32. As regards the first limb of the Government's argument, namely that in his appeal the applicant had failed to indicate the reasons which necessitated a hearing, the Court notes that the applicant's grounds for appeal were aimed at, among other things, contesting the facts established by the trial court, which lay at the heart of its decision to convict him of accepting a bribe. Furthermore, in his appeal, the applicant explicitly argued that he had not committed the offence in question. Account must also be taken of the fact that neither of the parties before the Court disputed that placing the request for a hearing at the top of the appeal submissions was in fact the usual practice in criminal cases in Türkiye. Be that as it may, the Court is of the view that the applicant's appeal should be taken as a whole and interpreted accordingly in ascertaining whether his request for a hearing was substantiated (or not).

33. To hold otherwise would mean that the Court would consider only the phrases written at the top of the first page of the appeals lodged on the applicant's behalf, on the grounds that these were the only remarks concerning the complaint raised by him in the present case. That would be tantamount to an overly restrictive approach which would risk rendering the guarantees of Article 6 § 1 illusory (see, *mutatis mutandis, Akdağ v. Turkey*, no. 75460/10, §§ 48-61, 17 September 2019). In any event, the Court notes that neither the Ankara Regional Court of Appeal nor the Constitutional Court made any mention of, let alone attached any weight to, the applicant's purported failure to expand on that point (see *Mirčetić v. Croatia*, no. 30669/15, § 24, 22 April 2021) or to request the hearing of witnesses when those courts were called upon to examine his request that a hearing be held at the appeal stage. In view of the above, the Court takes the view that the Government's contention on this point is untenable and dismisses it.

34. As regards the second limb of the Government's objection, based on the alleged withdrawal of the applicant's hearing request owing to his failure to reiterate that request in his application under Article 308/A of the CCP, the Court makes the following observations. Firstly, it reiterates that Article 308/A of the CCP provides for an extraordinary remedy, which, as the Government correctly indicated, is similar to the one under Article 308 of the CCP. The Court has already found that the remedy provided for by Article 308 of the CCP was not an effective remedy for the purposes of Article 35 § 1 of the Convention on the grounds that it was not directly accessible to individuals, since the use of that remedy was at the discretion of the Chief Public Prosecutor at the Court of Cassation (see *Akçiçek v. Turkey* (dec.), no. 40965/10, 18 October 2011). Similar considerations also apply in respect of the remedy laid down in Article 308/A of the CCP and the Court finds that the procedure set out therein is not an effective remedy under Article 35 § 1 of the Convention. Accordingly, the applicant's failure to raise the complaint concerning the absence of a hearing has no bearing on the Court's examination in the present case, as the applicant did in any event duly exhaust domestic remedies in respect of that complaint by raising it before

the Ankara Regional Court of Appeal and the Constitutional Court. Accordingly, the Court dismisses the Government's objection (compare *Boz v. Turkey* (dec.), no. 7906/05, 9 December 2008, and *Seliwiak v. Poland*, no. 3818/04, § 46, 21 July 2009).

35. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

36. The applicant reiterated his complaint.

37. The Government submitted that the applicant and his lawyer had taken part in the hearings before the first-instance court and he had thus been able to defend himself in person, as well as through his representative, in particular in respect of the statements made by his co-defendants and the witnesses. Furthermore, the principle of equality of arms had been respected at all stages, since the public prosecutor had not been summoned to the appellate review either.

38. More importantly, in the Government's submission, the first-instance court's decision to convict the applicant of bribery had been sufficiently reasoned and had duly addressed the arguments of the defence in all respects. That was also attested by the Court's decision – taken pursuant to Rule 54 § 3 of the Rules of Court at the time when the Government had been given notice of the present application – to declare inadmissible the applicant's complaint under Article 6 of the Convention that insufficient reasons had been given for his conviction. On that basis, the Government argued that it could not be maintained that the Regional Court of Appeal had given its decision without addressing the applicant's request for a hearing.

39. The Government further submitted that there had been no need to hold a hearing in the present case, given that in his appeal the applicant had raised no objection regarding the facts established by the trial court. In fact, the applicant had merely submitted that the trial court had erred in the legal classification of the offence of which he had been found guilty, which should rather have been characterised as abuse of official duties. In the Government's view, that submission meant that had the applicant been found guilty of abuse of official duties, he would not have appealed against the conviction. Lastly, pointing out the number of appeals the Fifth Criminal Division of the Ankara Regional Court of Appeal had been called upon to examine (2,537 in 2017, 3,554 in 2018 and 2,713 in 2019), the Government contended that expecting that court to hold a hearing in every case would pose a great risk to the completion of criminal cases within a reasonable time, which was another fundamental element of the right to a fair trial under Article 6 of the Convention. Accordingly, the Government urged the Court to

hold that there had been no violation of Article 6 § 1 of the Convention in the instant case.

2. The Court's assessment

(a) General principles

40. The Court has consistently held that an oral and public hearing constitutes a fundamental principle enshrined in Article 6 § 1. This principle is particularly important in the criminal context, where generally there must be at first instance a tribunal which fully meets the requirements of Article 6 (see *Findlay v. the United Kingdom*, 25 February 1997, § 79, *Reports of Judgments and Decisions* 1997-I) and where an applicant has an entitlement to have his or her case "heard", with the opportunity among other things to give evidence in his or her own defence, hear the evidence against him or her and examine and cross-examine the witnesses (see *Talabér v. Hungary*, no. 37376/05, § 23, 29 September 2009).

41. That said, the obligation to hold a hearing is not absolute (see *Håkansson and Sturesson v. Sweden*, 21 February 1990, § 66, Series A no. 171-A). There may be proceedings in which an oral hearing may not be required: for example, where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written material (see *Jussila v. Finland* [GC], no. 73053/01, § 41, ECHR 2006-XIV, with further references).

42. The manner of application of Article 6 to proceedings before courts of appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein. Where a public hearing has been held at first instance, the absence of such a hearing may be justified at the appeal stage by the special features of the proceedings at issue, having regard to the nature of the domestic appeal system, the scope of the appellate court's powers and to the manner in which the applicant's interests were actually presented and protected before the court of appeal, particularly in the light of the nature of the issues to be decided by it (see *Botten v. Norway*, 19 February 1996, § 39, *Reports* 1996-I, with further references).

43. Thus, leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6 although the appellant was not given an opportunity to be heard in person by the appeal or cassation court, provided that he or she had been heard by a first-instance court. Moreover, even if the court of appeal has full jurisdiction to examine both points of law and of fact, Article 6 does not always require a right to a public hearing or, if a hearing takes place, a right to be present in person (see, for instance, *Sigurþór Arnarsson v. Iceland*, no. 44671/98, § 30, 15 July 2003). The publicity requirement is certainly one

of the means whereby confidence in the courts is maintained. However, there are other considerations, including the right to a trial within a reasonable time and the related need for expeditious handling of the courts' caseload, which must be taken into account in determining the need for a public hearing at stages of the proceedings subsequent to the trial at first instance (see *Fejde v. Sweden*, 29 October 1991, § 31, Series A no. 212-C).

44. However, the Court has held that where an appellate court is called upon to examine a case as to the facts and the law and to make a full assessment of the question of the applicant's guilt or innocence, it cannot, as a matter of a fair trial, properly determine those issues without a direct assessment of the evidence given in person by the accused claiming that he or she has not committed the act alleged to constitute a criminal offence (see *Júlíus Þór Sigurþórsson v. Iceland*, no. 38797/17, § 33, 16 July 2019, and *Ekbatani v. Sweden*, 26 May 1988, § 32, Series A no. 134). The absence of an oral hearing on appeal has led to findings of a violation in several criminal cases (see *Talabér*, cited above, § 25 with further references).

(b) Application of those principles to the instant case

45. The Court notes at the outset that several hearings were held at the applicant's trial in the first-instance court, namely the Bolu Assize Court, and that the applicant and his lawyers not only took part but also submitted their arguments at a trial which respected the fundamental principles of the right to a fair trial, including the principles of adversarial procedure and equality of arms. Nevertheless, no hearing was held at the appeal stage and the applicant's request to that effect was left unanswered by the Ankara Regional Court of Appeal.

46. The Court is therefore called upon to assess for the first time the requirement to hold a public hearing under Article 6 § 1 of the Convention in the context of appellate reviews carried out by the regional courts of appeal in Türkiye, which became operational as of 20 July 2016 and which are new courts of second instance placed between the first-instance criminal courts and the Court of Cassation (the courts forming the basis of the former two-tier system of the criminal courts in Türkiye).

47. In that connection, the Court notes that regional courts of appeal in Türkiye are empowered to examine questions of both fact and law in respect of judgments and decisions of first-instance courts (criminal courts of first instance and assize courts) that are amenable to appeal. In the context of an appellate review, regional courts of appeal first carry out a preliminary examination with a view to ascertaining whether the appeal is admissible, and, if so, they may give one of three different decisions, namely (i) a decision to dismiss the appeal on the merits, if they find no unlawfulness as regards procedure and the merits and take the view that the evidence and the procedural steps were not flawed and that the evidence was properly assessed; (ii) a decision to dismiss the appeal on the merits by correcting the

unlawfulness, in the case of the existence of violations enumerated in sub-paragraph(c) of paragraph 1 of Article 303; (iii) ha decision to quash the lower court's judgment if they find an instance of irremediable nullity (*hukuka kesin aykırılık*) as enumerated in Article 289 of the CCP, and to remit the case back for re-examination. In all other instances, regional courts of appeal will carry out a fresh examination of the case and to that end, take the necessary steps to hold a hearing.

48. As is borne out by the Court's well-established case-law, Article 6 § 1 of the Convention does not entail an automatic obligation to hold a public hearing each and every time a matter comes before an appeal or second-instance court which has jurisdiction to examine both questions of fact and law arising from judgments of lower courts. The question whether a hearing is required before those courts essentially depends on the nature of the dispute they are called upon to determine.

49. It was common ground that the Ankara Regional Court of Appeal was called upon to examine the applicant's case as to both the facts and the law and that it was required to make a full assessment of the question of the applicant's guilt or innocence when it examined the trial court's judgment, which it then upheld. In that regard, the Court is unable to agree with the Government's argument that no hearing was required because of the applicant's failure to dispute the facts as established by the trial court, given that the appeals lodged on his behalf explicitly challenged them by contesting, among other things, his involvement in the offence of bribery, thereby calling into question the decision to convict him (see paragraphs proceedings before the Ankara Regional Court of Appeal 12 and 13 above).

50. Moreover, the issues that the Ankara Regional Court of Appeal was called upon to examine were not such as to preclude from the outset the need to hold a hearing in accordance with the Court's case-law on this matter, considering that (i) the applicant's conviction had been based mainly on statements (see *Muttilainen v. Finland*, no. 18358/02, § 24, 22 May 2007) and hearsay evidence; (ii) the applicant had consistently denied having committed the offence of which he had been found guilty; and (iii) the applicant's conviction entailed serious consequences for him, including a term of imprisonment and his dismissal from the public service (see paragraph 15 above).

51. That being the case, the Court will now seek to ascertain whether there were any circumstances justifying the lack of an oral hearing before that body. The Court reiterates that it has accepted such circumstances in cases where proceedings concerned exclusively legal or highly technical questions (see paragraph 43 above, and *Becker v. Austria*, no. 19844/08, § 39, 11 June 2015, and the cases cited therein). In that connection, the Court notes that in cases where the facts forming the basis of an accusation against the accused consist of evidence of a subjective and intangible nature, such as statements made by the accused or witnesses whose credibility may have an important bearing on

a first-instance court's finding, a second-instance court which is empowered to review a case as regards questions of fact and law cannot leave a hearing request unanswered (see *Mtchedlishvili v. Georgia*, no. 894/12, § 39, 25 February 2021, and *Becker*, cited above, § 41, with further references). Since the Ankara Regional Court of Appeal failed to give any real reasons, the Court is prevented from assessing whether there were any exceptional circumstances capable of enabling that court to dispense with a hearing. Similarly, the applicant's complaint to the Constitutional Court about the lack of a hearing in the Ankara Regional Court of Appeal was not given due consideration.

52. Moreover, the Court is unable to agree with the Government's contention that no separate issue had arisen from the Ankara Regional Court of Appeal's above-mentioned stance in the present case, owing to the fact that the applicant's complaint concerning a breach of the right to a reasoned judgment – which, in their view, also covered the proceedings at the appellate stage – was declared inadmissible at the time when notice of the present application was given. This is because the inadmissible complaint in question concerned the reasoning of the applicant's conviction, and not his that a hearing be held at the appeal stage. It cannot therefore have any bearing on the question whether the Ankara Regional Court of Appeal discharged its duty to address the applicant's request for a public hearing.

53. Having regard to the above background and taking into account its case-law concerning the legal issue in the present case, the Court further dismisses the Government's contention based on the premise that a finding of a violation in the present case would mean that the regional courts of appeal ought to hold a hearing in each and every case, given that it does not appear to have a sound legal basis when viewed against the entirety of the Court's line of reasoning.

54. Lastly, as regards the Government's argument that the principle of equality of arms had been respected in the proceedings before the appeal court, given that neither the public prosecutor nor the applicant or his lawyer had been summoned to make oral submissions, the Court reiterates that it rejected a similar argument, holding that the principle of equality of arms was only one feature of the wider concept of a fair trial in criminal proceedings and that it was thus not decisive for the question of a public hearing before an appeal court (see *Ekbatani*, cited above, § 30). On that basis, the Court dismisses the Government's argument.

55. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention on account of the Ankara Regional Court of Appeal's failure to address the applicant's request for a hearing.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

57. The applicant claimed 150,000 euros (EUR) in respect of pecuniary damage and a further EUR 150,000 for non-pecuniary damage.

58. The Government contested those claims.

59. The Court rejects the applicant's claim for pecuniary damage for lack of substantiation. It further considers that, in the circumstances of the present case, the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant (see *Mtchedlishvili*, cited above, § 44). Notwithstanding that conclusion, the Court reiterates that the most appropriate form of redress would be a retrial in accordance with the requirements of Article 6 of the Convention, should the applicant so request.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention*;*

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 December 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President