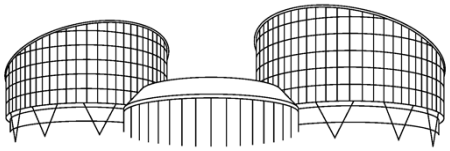

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF BAHAETTİN UZAN v. TURKEY

(Application no. 30836/07)

JUDGMENT

Art 6 § 1 (criminal) • Tribunal established by law • Designation of a specialised court to deal with certain banking offences and transfer of the applicant's case • Principle of "natural judge" • No undue interference with the judiciary on the part of the executive

Art 6 § 1 (criminal) • Impartial and independent tribunal • Reassignment of applicant's case not specific to his case • Minister of Justice's role limited to making a proposal for establishment of the tribunal, with the decision taken by an independent body with constitutional status • Court not significantly different to an ordinary assize court in establishment or functioning • Sufficient safeguards to exclude objective doubts on absence of inappropriate pressure by the executive on judges

STRASBOURG

24 November 2020

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 Bahaettin Uzan v. Turkey,

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

Jon Fridrik Kjølbro, *President,*
Aleš Pejchal,
Valeriu Griţco,
Egidijus Kūris,
Branko Lubarda,
Carlo Ranzoni,
Saadet Yüksel, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to:

the application (no. 30836/07) against the Republic of Turkey 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 Bahaettin Uzan ("the applicant"), on 17 July 2007;

the decision to give notice to the Turkish Government ("the Government") of the complaints under Article 6 § 1 of the Convention concerning the alleged violation of the applicant's right to an independent and impartial tribunal, as well as the alleged failure of the domestic courts to duly assess the evidence in the case file, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 20 October 2020,

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

INTRODUCTION

1. The case concerns the alleged violation of the applicant's right to an independent and impartial tribunal established by law under Article 6 § 1 of the Convention, mainly on account of the transfer of his case from the Istanbul 5th Assize Court to the Istanbul 8th Assize Court – which was designated as a specialised assize court to deal with certain banking offences – after the institution of the criminal proceedings against him.

THE FACTS

2. The applicant was born in 1942 and lives in Istanbul. He was represented by Mr M. İpek, a lawyer practising in Istanbul.

3. The Government were represented by their Agent.

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

A. Background to the case

5. The applicant is a member of the Uzan family and the brother of K. Uzan (hereinafter referred to as "K.U."), who founded one of the biggest conglomerates in Turkey, operating in a variety of sectors, ranging from banking and finance to media and telecommunications ("the Uzan Group"). In addition to the family's business activities, K.U.'s son, C.C.U., was the president of Genç Parti, a political party that he founded in 2002 (see *Uzan v. Turkey*, no. 30569/09, 20 March 2018 for further information on the political activities of C.C.U.).

6. The applicant, a construction engineer by profession, served in different capacities in a number of Uzan Group companies, including, as pertinent to the present case, as the vice-chairman of the board of directors of Merkez Yatırım A.Ş. (hereinafter referred to as "Merkez Yatırım"), an information technology (IT) company. The said company provided services to various other companies in the Uzan Group, including a bank by the name of Türkiye İmar Bankası T.A.Ş., ("İmarbank"). Merkez Yatırım also had shares in İmarbank.

7. On 3 July 2003 the Banking Regulation and Supervision Agency (*Bankacılık Düzenleme ve Denetleme Kurulu* – hereinafter referred to as "the BRSA") revoked İmarbank's licence to conduct banking operations and receive deposits, in view of the bank's failure to discharge its obligations to the State and its depositors and of the risks it posed to the financial security and stability of the country. It also took over the bank's management (for further details on that process see *Uzan and Others v. Turkey*, no. 19620/05 and 3 others, §§ 6 and 7, 5 March 2019). According to the information obtained from the criminal proceedings subsequently brought against the applicant in relation to the activities of İmarbank (see paragraphs 9-28 below), all board members of İmarbank and Merkez Yatırım, including the applicant, had resigned from their positions shortly before the takeover. It furthermore appears that the senior management of Merkez Yatırım informed BRSA that they would not provide IT services to the new management.

8. Following that, an audit was carried out by the BRSA on the accounts and operations of İmarbank and Merkez Yatırım. The extensive audit reports prepared by certified bank auditors showed that the bank had vastly misrepresented its accounts (officially declaring only one tenth of its deposits), as well as engaging in other fraudulent activities, such as tax evasion, which had allowed it to keep some 8,498,904,566,609,113 Turkish liras (TRL – approximately 4,743,430,000 euros (EUR) at the material time) off the books. Over the course of many years, the said amount had been largely funnelled to other Uzan Group companies *via* the bank's offshore accounts ("İmar offshore"). It was also used for personal gain by some members of the Uzan family, including the applicant, and the

senior management of İmarbank, for example for payment of their personal taxes. The reports established that the fraudulent activities in question had been carried out through the accounting software developed by Merkez Yatırım for the use of İmarbank. It was also discovered during the audits that Merkez Yatırım provided services exclusively to companies in the Uzan Group, including İmar offshore, in which the applicant had also formerly held shares and been a board member.

B. Criminal proceedings against the applicant

1. Charges brought against the applicant and the preparatory hearing

9. Based on the findings of the audit, criminal proceedings were brought against twenty-five people – board members and senior managers of İmarbank and Merkez Yatırım, including the applicant and his brother, K.U. – in connection with the allegedly fraudulent activities carried out at İmarbank. On 11 September 2003 the applicant was arrested and placed in pre-trial detention.

10. On 3 December 2003 the Istanbul public prosecutor filed a bill of indictment in respect of the twenty-five suspects with the Istanbul 5th Assize Court, which, under the relevant procedural laws in force at the material time, had competence and jurisdiction over the case. Charges were brought under section 22(3) of the former Banking Activities Act (Law no. 4389) for embezzlement, and under Article 313 § 1 of the former Criminal Code (Law no. 765) for setting up, or taking part in, an organisation with a view to committing offences. The applicant's brother K.U., who was the head of the Uzan Group and the chairman of both İmarbank and Merkez Yatırım, was accused of heading the criminal organisation that had committed the suspected bank fraud. The applicant, who had no managerial responsibilities and owned no shares in İmarbank, was primarily accused of participating in this criminal enterprise by enabling the embezzlement of the bank's money through the software that Merkez Yatırım had developed for the use of İmarbank.

11. On 15 December 2003 the Istanbul 5th Assize Court held a preparatory hearing (*tensip*) on the case.

2. Amendments to the Banking Activities Act

12. On 26 December 2003, before the Istanbul 5th Assize Court held the first hearing in the applicant's case, Law no. 5020 on Amendments to the Banking Activities Act and Some (other) Acts entered into force. In accordance with section 26(2) of that new Law, criminal proceedings concerning the offence of embezzlement laid out in section 22(3) and (4) of the former Banking Activities Act, as well as other related offences that fell within the jurisdiction of the assize courts, would be conducted before the

1st Assize Court in the province in which the relevant bank was located. Section 26(2) provided in addition that where deemed necessary the High Council of Judges and Prosecutors ("the HCJP") could, following a proposal of the Ministry of Justice ("the Minister"), assign other assize courts in the relevant province to try such offences, or set up a new assize court for that purpose. Temporary provision 2 of Law no. 5020 further provided that public prosecutors and judges charged with investigating or hearing cases concerning the relevant banking offences would act expeditiously and that they could not be reassigned to another location or post for a period of three years, save for disciplinary purposes or unless they had valid reasons for requesting such reassignment.

13. Following a proposal made by the Ministry of Justice, on 15 January 2004 the HCJP put the Istanbul 8th Assize Court into operation, which, according to the information provided by the Government (see paragraph 36 below), had been established by the Ministry of Justice back on 16 April 1978, but which had not been operational. The Istanbul 8th Assize Court was granted exclusive jurisdiction to try the offences indicated under section 26(2) of Law no. 5020 as a specialised court.

14. Accordingly, on 26 January 2004 the applicant's case was transferred from the Istanbul 5th Assize Court to the Istanbul 8th Assize Court (case no. 2004/1 E.).

3. Proceedings before the Istanbul 8th Assize Court

15. From the start of the proceedings, the defendants challenged the constitutionality of the Istanbul 8th Assize Court. They claimed that the establishment of that court had been contrary to the universal principle of a "natural judge" provided under Article 37 § 1 of the Constitution and Article 6 § 1 of the Convention, for it was an extraordinary court established after the commission of the alleged offences. They therefore requested the referral of the matter to the Constitutional Court for a ruling on the constitutionality of the Istanbul 8th Assize Court.

16. At the hearing held on 15 April 2004, the Istanbul 8th Assize Court rejected the plea for referral to the Constitutional Court. It stated at the outset that Law no. 5020 that amended the former Banking Activities Act had been adopted in Parliament by a large majority and had been signed by the President of the Republic, who himself had been a former Constitutional Court judge. The constitutionality of the relevant legal amendments had not been challenged by any competent authorities, and the new Law had found wide acceptance among the public.

17. It held that, from a legal perspective, the 8th Assize Court had been established by the HCJP – a constitutional institution which was almost entirely comprised of high court judges – by reason of perceived necessity, having regard to the workload of the assize courts in Istanbul and with the purpose of delivering justice in a prompt manner. The 8th Assize Court was

not governed by a separate legal framework, nor did it have a separate organisational structure from the other assize courts. The judges appointed to that court were competent to serve in all Istanbul courts. It further emphasised that the right to a fair trial under Article 6 of the Convention included first and foremost the right to be tried by a competent and well-informed judge. Courts with special jurisdiction, such as that one, were a manifestation of that right and they served the interests of the accused. The unprecedented developments witnessed in global economic relations and technology had brought about a new generation of economic crimes, which required specialised courts equipped to deal with such complex matters. It therefore concluded that its establishment as a specialised court was not only in compliance with the principle of "natural judge", but that it actually served the requirements of the right to a fair trial.

18. At the close of the same hearing, the Istanbul 8th Assize Court ordered an on-site inspection on the premises of İmarbank and Merkez Yatırım, in order to assess the veracity of the evidence in the case file and of the defence statements, and thereby to establish the material facts of the case. It stated that the inspection – which was to be conducted by the court-appointed experts – would focus on four areas: the operation of İmarbank's automation system; the bank's offshore accounts; the sale of Treasury bonds by the bank; and the embezzlement of money collected from clients as taxes. The court also commissioned another group of experts – consisting of a professor of criminal law, a professor of commercial law and a certified bank auditor – to prepare, following the submission of the aforementioned inspection reports, an abbreviated report on all the factual findings in the case file, including the defendants' participation in the commission of the alleged offences.

19. Between September and December 2004 the experts submitted their inspection reports, and in December 2004 the abbreviated report was delivered. The results of the reports largely coincided with the earlier reports prepared by bank auditors (see paragraph 8 above). In particular, they confirmed the findings regarding the involvement of Merkez Yatırım in the fraudulent activities in question, which had taken the form of preparing the technical infrastructure for the conduct of such activities and providing technical support for their use. They stressed in that connection that having regard to the scope and the characteristics of the fraudulent operations that could be performed with the use of the accounting software in question, it was evident that the software had been custom-designed for the very purpose of enabling such operations. They further found that Merkez Yatırım agents had also taken part in efforts to remove data during the handover of the bank management to BRSA to prevent the discovery and tracing of the fraudulent transactions. Moreover, the collective resignation of the board members and the senior managers of Merkez Yatırım and İmarbank right before the handover (see paragraph 7 above) showed a unity

of action that strongly suggested that the relevant individuals had been aware of the illegal acts in question and had taken part in those acts.

20. In his defence statements throughout the proceedings the applicant denied the charges against him and demanded his acquittal. He claimed that his situation was the most "dramatic" among all the defendants, as he had been charged solely on the grounds of his kinship with K.U. He admitted to having worked closely with K.U. for some fifty years. He also stated, however, that he was a construction engineer by profession, that his participation in the Uzan Group companies, including Merkez Yatırım, had been only symbolic, and that he had no knowledge or experience of banking or IT operations. He claimed that he had never been to the operation centre of Merkez Yatırım, that he did not know how the company's IT system was run, that he had only participated in meetings concerning the company's general management, and that all decisions concerning technical matters had been delegated by the board to the company's directors. Those directors had also indicated in their submissions before the court that they had never seen him on the company premises and that they had taken no instructions from him. He claimed, therefore, that in the absence of any tangible evidence implicating him in person, he could not be held accountable for the offences at issue. He added that, in any event, the elements of the relevant offences had not been present in the instant case; that the responsibility of Merkez Yatırım as a service provider had ceased once it had delivered the relevant software to İmarbank; and that there had been no criminal organisation engaged in embezzlement, but only a badly managed bank that had made a loss.

21. On 21 February 2006 the Istanbul 8th Assize Court handed down its judgment in the case. It decided to convict the applicant as charged and to sentence him to (i) one year and eight months' imprisonment for membership of an organisation founded for the purpose of committing a crime, and (ii) fifteen years, six months and twenty days' imprisonment, together with a fine in the amount of 19,426,377,822 Turkish liras (TRY[1]) (equivalent of approximately 12,314,900,000 euros (EUR) at the material time), for aggravated embezzlement. Sixteen of the defendants were acquitted of both charges, due to the absence of sufficient evidence against them.

22. In its 520-page judgment the Istanbul 8th Assize Court reviewed some fifteen reports prepared by certified bank auditors, bank inspectors and the Capital Markets Board (*Sermaye Piyasası Kurulu*) in the aftermath of the revocation of İmarbank's banking licence (see paragraph 8 above), as well as the inspection reports and the abbreviated report mentioned in paragraph 19 above. It made it clear, however, that it had only taken into

[1] On 1 January 2005 the Turkish lira (TRY) entered into circulation, replacing the former Turkish lira (TRL) TRY 1= TRL 1,000,000.

consideration those findings in the reports which had involved technical assessment, and not those that had entailed assessments of a legal nature, as such assessment was the duty of the court and not of experts. It also stated expressly that throughout the proceedings it had paid the utmost regard to its obligations arising from the right to a fair trial as set out in, *inter alia*, Article 6 § 1 of the Convention and the related case-law of the Court. The trial court accordingly confirmed that the defence statements had been assessed in the most extensive way possible, any witnesses called by the defence had been examined, and any evidence that had not been subject to examination during the proceedings had not been taken into account in the verdict.

23. Relying on the information and documents in the case file, the Istanbul 8th Assize Court examined in detail whether the elements of the offences in question had been established in the instant case and whether and how all the accused, including the applicant, had played a part in the commission of those offences. The trial court held that this crime – the biggest banking corruption incident in the country's history – had been facilitated by the software programme developed for İmarbank by Merkez Yatırım, which had exclusively catered to Uzan-group companies. The programme had been used to divert money, *inter alia*, to other companies in the Uzan Group. Having regard (i) to the fact that this criminal enterprise had been headed by the applicant's brother, who had also been the chairman of Merkez Yatırım and with whom the applicant had admitted to having very close ties, including working relations over the course of many years, (ii) to the applicant's position as the vice-chairman of Merkez Yatırım, in addition to his duties in other Uzan-group companies, and (iii) to the instrumental role played by Merkez Yatırım over the years in funnelling tremendous amounts of money from İmarbank, the trial court found it established that the applicant had knowingly participated in the offence of aggravated embezzlement and had thus taken part in this criminal organisation. It stressed in this regard that it was through the use, under his apparent knowledge, of the relevant software programme that a great part of his personal taxes had also been paid. It further noted that the applicant had admitted to working under the instructions of his brother, K.U., and that he had resigned from his duties at Merkez Yatırım together with the other board members following orders by K.U. in that regard. The trial court moreover emphasised the absolute secrecy in which this fraudulent scheme had been conducted, which was evidenced, *inter alia*, by the phone-tapping records obtained in the past few years in the context of a separate (but related) criminal investigation. In the trial court's opinion, all the evidence in the case file pointed to the finding that the legal entity of the bank had been used as a cover for the criminal enterprise.

4. Appeal proceedings

24. In his appeal against the judgment of the 8th Assize Court, the applicant mainly argued that he had had no duties or responsibilities regarding the IT-related activities of Merkez Yatırım, including the development of the software that had been the subject of the charges against him; that he had been convicted on the sole basis of his family ties to K.U. and his board membership of Merkez Yatırım, without any concrete evidence implicating him in the offences that he had been charged with; that the elements of the offences of forming a criminal organisation and embezzlement had not been constituted on the facts; and that he had been convicted on the basis of unlawfully obtained evidence. He argued in that connection that the trial court had referred to certain phone-tapping records in its judgment as evidence of the secrecy of the alleged criminal organisation in question, without, however, providing those records for the case file.

25. He also argued, quite extensively, that his trial and conviction by the Istanbul 8th Assize Court – which had not been in existence at the time of the commission of the offences in question, or even on the date on which the criminal proceedings at issue had been brought – had been in breach of the "natural judge" principle provided under the Constitution, which required the trial of an individual only by a tribunal previously established by law. While he acknowledged the legitimate role served by specialised courts in a judicial system, he claimed that the Istanbul 8th Assize Court was not a "specialised court" but an "extraordinary" one, since it had been established after the commission of the alleged offences in question and for the sole purpose of adjudicating the specific offences with which he had been charged. He further argued that temporary provision 2 of Law no. 5020 offered the judges of this extraordinary court some additional rights, guarantees and privileges – such as a prohibition on their assignment to another location or post for a period of three years and a requirement for the expeditious processing of the cases – that were much beyond those granted to ordinary judges (see paragraph 12 above and 31 below).

26. The applicant also stressed that the court in question had been established by the HCJP following a proposal of the Minister, who had been a member of the ruling party that had been a political rival of the Uzan family (see paragraph 5 above), and that the HCJP was presided over by the Minister. He further argued that certain officials from the ruling party had made critical public statements regarding the İmarbank proceedings.

27. The applicant lastly argued that the establishment of the Istanbul 8th Assize Court had also been against Law no. 5020 itself, as that Law had designated the 1st assize courts in every province for hearing banking offences specified under that Law. The establishment of a new court to hear those offences had in fact required "necessity" – effectively meaning that neither the first chamber, nor any of the other existing chambers had been

able to try those cases –, whereas there had been no such specific and objective necessity in the present case. The applicant claimed in that connection that the transfer of his case from the 5th to the 1st Assize Court, as originally envisaged in accordance with Law no. 5020, would not have contravened the principle of "natural judge", for, unlike the Istanbul 8th Assize Court, that court had already been in operation at the material time.

28. On 26 January 2007 the Court of Cassation held a hearing. It upheld the judgment of the Istanbul 8th Assize Court in respect of the applicant. In particular, the Court of Cassation held expressly that the complaints regarding the unconstitutionality of the establishment of the trial court should be dismissed as not being of a "serious" nature. It also stressed that the absence of the phone-tapping records mentioned by the applicant from the case file had not affected the outcome of the proceedings, bearing particularly in mind that those records had not been accorded decisive evidentiary value in the trial court's judgment.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. The Constitution

29. The relevant provisions of the Constitution as pertinent to the present case provide as follows:

Guarantee of Lawful Judge

Article 37

"No one may be tried by any judicial authority other than the legally designated court.

Extraordinary tribunals with jurisdiction that would in effect remove a person from the jurisdiction of his legally designated court shall not be established."

Independence of the Courts

Article 138

"In the performance of their duties, judges shall be independent; they shall give judgment, according to their personal conviction, in accordance with the Constitution, statutes and the law.

No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions.

No questions may be asked, debates held, or statements made in the legislative assembly with respect to the exercise of judicial power in the context of an ongoing trial.

..."

Security of Tenure of Judge and Public Prosecutors

Article 139

"Judges and public prosecutors shall not be removed from office or compelled to retire without their consent before the age prescribed by the Constitution; nor shall they be deprived of their salaries, allowances or other rights attaching to their status, even as a result of the abolition of a court or post.

Exceptions shall be permitted in the case of judges or prosecutors who have been convicted of an offence requiring their dismissal, those whose unfitness to carry out their duties for medical reasons has been conclusively established or those whose continued service has been judged undesirable."

Organisation of Courts

Article 142

"The formation of the courts, their duties and powers, their functioning and proceedings before them shall be governed by law."

High Council of Judges and Prosecutors

Article 159
[as in force at the material time]

"The High Council of Judges and Prosecutors shall be established and shall exercise its functions in accordance with the principles of the independence of the courts and the security of tenure of the judiciary.

The Minister of Justice shall be the chairman of the Council. The Under-Secretary of the Ministry of Justice shall be an *ex officio* member of the Council. Three regular and three substitute members of the Council shall be appointed by the President of the Republic for a term of four years from a list of three candidates nominated for each vacant office by the Plenary Assembly of the Court of Cassation from among its own members and two regular and two substitute members shall be similarly appointed from a list of three candidates nominated for each vacant office by the Plenary Supreme Administrative Court. Members may be re-elected on the expiry of their term of office. The Council shall elect a deputy president from among its regular members.

The High Council of Judges and Prosecutors shall conduct the proceedings regarding the admission to the profession of judges and public prosecutors of civil and administrative courts, appointments, transfers to other posts, the delegation of temporary powers, promotion, and promotion to the first category, the allocation of posts, decisions concerning those whose continuation in the profession is found to be unsuitable, the imposition of disciplinary penalties and removal from office. It shall take final decisions on proposals by the Ministry of Justice concerning the abolition of a court or an office of judge or public prosecutor, or changes in the jurisdiction of a court. It shall also exercise the other functions given to it by the Constitution and laws.

..."

B. Law no. 5020 on Amendments to the Banking Activities Act and Some (other) Acts

30. Section 26(2) of Law no. 5020 that entered into force on 26 December 2003 provided as follows:

> "...Cases that relate to offences which fall under Article 22 (3) and (4) [of the former Banking Activities Act, which includes, as relevant to the present case, the offence of embezzlement], or other related offences that fall within the jurisdiction of the assize courts, shall be tried before the 1st Assize Court in the province in which the relevant bank is located. Where deemed necessary, the High Council of Judges and Prosecutors may, following a proposal of the Ministry of Justice, assign other assize courts in the relevant province to try such offences, or set up a new assize court."

31. Temporary provision 2 of Law no. 5020 further provided that public prosecutors and judges charged with investigating or hearing cases concerning the relevant banking offences would act expeditiously and that they could not be reassigned to another location or post for a period of three years, save for disciplinary purposes or unless they had valid reasons for requesting such reassignment.

C. Code of Criminal Procedure (Law no. 1412)

32. Article 23 of the Code of Criminal Procedure as in force at the material time (Law no. 1412) provided that an application for the recusal of a judge could be lodged in circumstances where there were grounds raising doubts as to the judge's impartiality.

D. Constitutional Court judgment of 14 January 2015 (E.2014/164-K.2015/12)

33. In a judgment delivered on 14 January 2015 in a different context (E.2014/164-K.2015/12, published in the Official Gazette on 22 May 2015), the plenary of the Constitutional Court reiterated its interpretation of the "natural judge" principle. It held that the "natural judge" principle could not be construed as prohibiting a newly established court or a judge recently appointed to an existing court from hearing a case concerning an offence committed prior to the establishment of the court or the judge's appointment. It stated that unless the case was limited to a single event, person or group, the examination by a newly established court or a recently appointed judge of a case arising prior to the establishment or appointment in question did not constitute an infringement of the right to a lawfully established court.

THE LAW

I. ALLEGED VIOLATION OF THE RIGHT TO AN INDEPENDENT AND IMPARTIAL TRIBUNAL ESTABLISHED BY LAW UNDER ARTICLE 6 § 1 OF THE CONVENTION

34. The applicant complained that he had not been tried by a "lawful" or "natural" judge, but before an "extraordinary tribunal" that had been established after the commission of the crime that he had been charged with, which was contrary to the requirement under Article 6 § 1 of the Convention to be tried before a tribunal established by law. He also argued under the same provision that the court that tried him had lacked independence and impartiality, both objectively and subjectively, having regard (i) to the manner and the circumstances in which it had been established, and (ii) to the statements made by the president of that court, who was a member of the panel that tried him, regarding bankers in a book that he had previously published. He argued in particular that the Minister of Justice's significant involvement in the establishment of the trial court, coupled with the accusatory statements made by members of the ruling party – including the Minister himself – targeting his family, was clear evidence of the executive's ulterior motive to affect the outcome of the proceedings to his detriment.

Article 6 § 1 of the Convention, in so far as relevant, provides as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. The parties' submissions

1. The Government

35. While no specific questions were put to the parties under the right to a "tribunal established by law", the Government have addressed in detail that aspect of the applicant's complaint, alongside those concerning the independence and impartiality of the trial court, as part of their observations submitted to the Court.

36. The Government stated that, contrary to the applicant's arguments, the Istanbul 8th Assize Court had been established back in 1978, but had not been put into operation by the HCJP until 2003, that is to say until after the entry into force of Law no. 5020. The transfer of the applicant's case to the 8th Assize Court had been effected on the basis of the aforementioned amendments to section 22(3) and (4) of the Banking Activities Act, and therefore had a clear basis in law. Moreover, the decision to designate the 8th Assize Court for dealing with banking offences had not been taken by political authorities, but by the HCJP, which was an independent body, and

the judges appointed to that court were no different from other judges when it came to their appointment, promotion and other personal rights. Furthermore, once the 8th Assize Court had commenced operations, no changes were made to its composition by the HCJP or by any other authority over the course of the proceedings. The Government also claimed, without referring to any particular legal provisions, that the HCJP had not been presided over by the Minister of Justice at the material time.

37. The Government explained that the need to establish specialised courts to deal with banking offences had been brought about by the necessity to keep up with the increased complexity of such offences, which required expert knowledge. Those specialised courts were, therefore, intended to serve the needs and requirements of the right to a fair trial under Article 6 of the Convention by ensuring the effectiveness of the relevant proceedings. The Government emphasised in this regard that the establishment of specialised courts was not unique to banking offences and that such courts were also in operation in other areas requiring expert knowledge, such as courts dealing with intellectual and industrial property rights, smuggling and terrorism offences.

38. The Government emphasised that any changes to the jurisdiction of a court that were aimed not at a specific case but at addressing the general needs of the judicial system in the country did not contradict the principle of a "natural judge", on the condition that the relevant changes were introduced through legislation. They relied in that connection on a judgment delivered by the Turkish Constitutional Court on 14 January 2015 (E.2014/164-K.2015/12), in which it affirmed that the principle of a "natural judge" provided under the Constitution did not mean that new courts could not be established or judges newly appointed to existing courts could not hear a case concerning previously committed offences (see paragraph 33 above). Accordingly, the transfer of the applicant's case to the Istanbul 8th Assize Court following the relevant legislative amendment, together with all other cases concerning banking offences pending before the Istanbul Assize Courts, had not contravened the applicant's right to have his case heard by a "natural judge" as argued.

39. The Government also addressed the applicant's argument that his case should have been transferred to the Istanbul 1st Assize Court as originally envisaged in accordance with Law no. 5020, as opposed to a newly established court. They stated that in provinces such as Istanbul, where the courts suffered from an excessive case-load, allocating banking offences to one of the assize courts already in operation could have prevented the proceedings from being carried out effectively and expeditiously. The Government claimed, therefore, that the putting into operation of the 8th Chamber of the Istanbul Assize Court as a new, specialised court had not been permitted only under Law no. 5020, which expressly authorised the establishment of new assize courts to deal with the

relevant banking offences as necessary, but had also been justified in practice.

40. As regards the applicant's complaint regarding the statements made by, *inter alios*, the Minister of Justice, the Government stated that banking crimes had been a "hot topic" of general interest at the material time. Accordingly, in view of the public interest of the statements at issue, which had not named the applicant, it was mere speculation to allege that they had been uttered to put pressure on the domestic courts. According to the Government, it was the Minister's duty and responsibility to inform the public of banking crimes and to raise awareness of that important issue.

41. The Government lastly argued, as concerns the applicant's complaints regarding the lack of independence and impartiality of the president of the trial court, that those complaints had to be declared inadmissible for failure to exhaust the relevant domestic remedies, as the applicant had not raised them before any domestic courts. They emphasised in this regard that the applicant could have lodged an application for the disqualification of the relevant judge under Article 23 of the Code of Criminal Procedure as in force at the material time (see paragraph 32 above).

2. The applicant

42. The applicant argued that his case had been removed from the court that should have lawfully exercised jurisdiction over it – which had originally been the Istanbul 5th Assize Court or, following the relevant legislative amendments, the Istanbul 1st Assize Court – and was instead tried by the Istanbul 8th Assize Court, which was an extraordinary tribunal that had been established after he had been charged on the orders of the executive. His trial before that court had been carried out, therefore, against both the "natural judge" principle, as set out in the Turkish Constitution and Article 6 § 1 of the Convention, and the right to an independent and impartial tribunal. On this latter point, the applicant emphasised the perceived political rivalry between the executive and his family, as was evidenced by the statements made by members of the ruling party, including the Minister of Justice, who targeted his family in connection with the alleged bank fraud at issue and who, allegedly, aimed to put pressure on the judges hearing their case. He submitted some newspaper articles in support of this claim, including one where the Minister of Justice was quoted as stating, in very strong words, that he would come down very hard on bankers implicated in fraud if he were a prosecutor. He also submitted a statement by another member of the executive, saying that C.C.U. (see paragraph 5 above) and his family had made it into the "world history of thefts". In support of his arguments regarding the "extraordinary" nature of the specialised court, the applicant also pointed to temporary provision 2 of Law no. 5020, which granted the judges sitting on that court "additional

guarantees" not offered to other assize court judges (see paragraphs 12 and 31 above).

43. The applicant further argued that, despite the Government's assertion to the contrary, the HCJP had been presided over by the Minister of Justice at the material time, as set out in Article 159 of the Constitution (see paragraph 29 above). He lastly claimed, without providing any supporting evidence, that he had raised his allegations regarding the lack of independence and impartiality of the president of the trial court a number of times during the course of the criminal proceedings.

B. The Court's assessment

1. Admissibility

(a) "Tribunal established by law"

44. The Court observes that the applicant's complaint concerning his right to a "tribunal established by law" is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) "Independent and impartial tribunal"

45. The Court notes that there are two aspects to the applicant's complaint regarding the right to an "independent and impartial tribunal". The first concerns the alleged lack of independence and impartiality of the President of the Istanbul 8th Assize Court in his individual capacity as judge from a subjective point of view, while the second mainly relates to the involvement of the Minister of Justice in the establishment of the 8th Assize Court, which, in the applicant's opinion, had the effect of compromising the structural or objective independence and impartiality of the court (see paragraph 57 below for further elaboration on the subjective and objective tests developed by the Court in this context). The Court will examine each aspect of the complaint separately.

46. As regards the first aspect relating to the independence and impartiality of the President of the trial court, the Court notes that the applicant did not submit any evidence to demonstrate that he had requested the recusal of the trial court's president, as indicated by the Government (see paragraph 41 above). It further observes that in the appeal that he submitted to the Court of Cassation, the applicant did not raise any concerns regarding the lack of independence and impartiality of the president. Nor has he provided an explanation as to why he would be absolved from the obligation to resort to these remedies. Having regard to the general principles developed in its case-law regarding the rule of exhaustion of

domestic remedies under Article 35 § 1 of the Convention (see, for instance, *Sargsyan v. Azerbaijan* [GC], no. 40167/06, §§ 115-16, ECHR 2015), and on the basis of the documents in its possession, the Court therefore concludes that that part of the application must be rejected under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies as argued by the Government.

47. As for the remaining complaint regarding the structural or objective independence of the Istanbul 8th Assize Court, the Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) "Tribunal established by law"

48. The Court reiterates that under Article 6 § 1 of the Convention, a tribunal must always be "established by law". According to its case-law, the object of the term "established by law" is to ensure "that the judicial organisation in a democratic society does not depend on the discretion of the executive, but that it is regulated by law emanating from Parliament" (see *Zand v. Austria*, no. 7360/76, Commission's report of 12 October 1978, Decisions and Reports (DR) 15, pp. 70-80, and *Fruni v. Slovakia*, no. 8014/07, § 134, 21 June 2011).

49. The Court moreover reiterates that the term "established by law" envisages the whole organisational set-up of the courts, including the establishment of the individual courts and the determination of their jurisdiction (see, *mutatis mutandis*, *Zand*, cited above). In principle, a violation by a tribunal of domestic legal provisions relating to the establishment and competence of judicial organs gives rise to a violation of Article 6 § 1. The Court may therefore examine whether domestic law has been complied with in this respect. However, having regard to the general principle that it is, in the first place, for the national courts themselves to interpret the provisions of domestic law, the Court finds that it may not question their interpretation unless there has been a flagrant violation of that law (see *DMD GROUP, a.s., v. Slovakia*, no. 19334/03, § 61, 5 October 2010).

50. The Court has further acknowledged in its case-law that fighting corruption and organised crime may well require measures, procedures and institutions of a specialised character (see *Fruni*, cited above, § 142). It has accordingly held that Article 6 § 1 cannot be read as prohibiting the establishment of special criminal courts if they have a basis in law (see, *mutatis mutandis*, *X and Y v. Ireland*, no. 8299/78, Commission decision of 10 October 1980, (DR) 22, pp. 51, 72, and *Erdem v. Germany* (dec.), no. 38321/97, 9 December 1999).

51. On the present facts, the designation of a specialised court to deal with certain banking offences was brought about *via* the amendments to the Banking Act by Law no. 5020, which was a piece of legislation emanating from Parliament. It therefore clearly had a basis in domestic law. The applicant did not contest that as such, but argued that according to the relevant law, his case should have been transferred to the Istanbul 1st Assize Court, and not to the 8th Assize Court, which was an "extraordinary tribunal" established as per the Minister of Justice's request after the entry into force of the relevant legislative amendments and which thus contravened the constitutional principle of "natural judge".

52. The Court notes that the challenges brought by the applicant concerning the alleged unconstitutionality of the Istanbul 8th Assize Court were dismissed by both that court and the Court of Cassation (see paragraphs 16, 17 and 28 above). The Court sees no reason to depart from the conclusions of the domestic courts in this regard, which are better placed than it to interpret and apply domestic law and to decide on issues of constitutionality (see *Thiam v. France*, no. 80018/12, § 62, 18 October 2018). In the Court's view, it is clear from a plain reading of the relevant provision that the lawmaker offered the competent State authorities the choice between (i) designating the 1st Assize Court as the specialised court for the relevant purposes, (ii) selecting another assize court to serve as the specialised court, and (iii) setting up a new assize court altogether for that purpose, as needed, upon the proposal of the Minister of Justice and the final decision of the HCJP. It thus follows that while the law did not provide any specific criteria that would justify the setting up of a new court, the discretion used in the instant case to put the 8th Assize Court into operation had an unequivocal basis in law and was not an arbitrary act.

53. The Court further observes from the information provided by the Government, which was not contested by the applicant, that the institution and functioning of the Istanbul 8th Assize Court was in line with the interpretation of the constitutional principle of "natural judge" by the Constitutional Court (see paragraphs 33 and 38 above), which in turn appears to be in compliance with the Convention standards. The Court notes in that connection that the Istanbul 8th Assize Court was not an "extraordinary tribunal" established *ad hoc* or *ad personam* to deal specifically with the applicant's case; it rather operated as a specialised chamber within the existing structure of the Istanbul assize courts, which was granted jurisdiction to take over trials in respect of *all* relevant banking offences in the province of Istanbul, which was subject to the same rules of procedure as all assize courts, and to which were appointed judges who enjoyed the same safeguards and benefits as all assize court judges (see paragraphs 63 and 64 below for further discussion on these matters).

54. The Court lastly notes that the applicant has not alleged any unlawful conduct in the actual composition of the bench that heard his case,

which is one of the elements in determining whether a tribunal was "established by law" (see, for instance, *Buscarini v. San Marino* (dec.), no. 31657/96, 4 May 2000).

55. The Court considers, in the light of the foregoing, that there is no evidence in the case file to hold that the establishment of the Istanbul 8th Assize Court entailed an undue interference with the judiciary on the part of the executive that undermined the purpose of the right to a "tribunal established by law" within the meaning of the Convention (see, for instance, *Biagioli v. San Marino* (dec.), no. 8162/13, § 79, ECHR 8 July 2014, and *Pasquini v. San Marino*, no. 50956/16, § 110, 2 May 2019; see also the findings confirming the independence and impartiality of that court from the executive in paragraphs 61-68 below). Accordingly, in so far as the circumstances of the present case have been substantiated, the Court has found no elements supporting a conclusion other than that the Istanbul 8th Assize Court was a "tribunal established by law" within the meaning of Article 6 § 1 of the Convention.

56. The Court therefore concludes that there has been no violation of the applicant's right to a tribunal established by law under Article 6 § 1 of the Convention.

(b) Independence and impartiality of the Istanbul 8th Assize Court

57. The Court refers at the outset to the general principles set out in its case-law relating to the requirements of an "independent and impartial tribunal" (see, for instance, *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, §§ 144-150, 6 November 2018). It notes in this connection that in determining whether a body could be considered "independent", regard must be had to such factors as the manner of appointment of the body's members, the duration of their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence (see *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], nos. 2312/08 and 34179/08, § 49, ECHR 2013 (extracts), with further references therein). As regards the requirement of impartiality, the Court has established that there are two aspects to that requirement: first, the tribunal must be subjectively free of personal prejudice or bias; secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect (see *Sacilor-Lormines v. France*, no. 65411/01, § 60, ECHR 2006-XIII). The objective test mostly concerns hierarchical or other links between the judge and other protagonists in the proceedings. It must therefore be decided in each individual case whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal (see *Ramos Nunes de Carvalho e Sá*, cited above, § 148).

58. The Court notes that the applicant's complaint under this head – as opposed to the complaint regarding the alleged personal bias of the President of the Istanbul 8th Assize Court (see paragraph 46 above) – concerns the objective impartiality of the Istanbul 8th Assize Court, which, according to the Court's settled case-law, is closely linked to the question of the independence of that court (see *Sacilor-Lormines*, cited above, § 62). The Court will accordingly consider both issues together as they relate to the present case.

59. The Court further reiterates that the reassignment of cases is not, as such, a problem under the Convention, as long as the Court is satisfied that such reassignment was compatible with Article 6 § 1, and, in particular, with its requirements of independence and impartiality (see *Bochan*, no. 7577/02, §§ 71 and 72, 3 May 2007). It also stresses in this connection that in deciding whether there is a legitimate reason to fear that a certain court lacked independence or impartiality, the standpoint of the party to the proceedings is important without being decisive. What is decisive is whether the party's doubts can be held to be objectively justified (see, *Ramos Nunes de Carvalho e Sá*, cited above, § 147).

60. Turning to the facts before it, the Court notes that the applicant's concerns regarding the Minister of Justice's involvement in the establishment of the Istanbul 8th Assize Court as the new specialised court have been partly addressed above within the context of the right to a "tribunal established by law". It considers that the findings made in that context apply here as well in so far as relevant, noting in particular that the arguments advanced by the applicant to contest both the lawfulness and the independence and impartiality of the court in question are based to a large extent on the same factual considerations.

61. The Court reiterates in this regard that the reassignment to the 8th Assize Court was not specific to the applicant's case, but applied across the board to all cases in Istanbul involving the relevant banking offences.

62. It further notes that the role played by the Minister in the establishment of the Istanbul 8th Assize Court had only been limited to making a proposal for that purpose, and that the actual decision to put that proposal into action was taken by the HCJP, which was an independent body with constitutional status. While it appears, contrary to the Government's allegations, that the Minister of Justice did preside over the HCJP as per the terms of the relevant constitutional provision in force at the material time (see Article 159 of the Constitution as noted in paragraph 29 above), that fact alone cannot be taken to compromise the independence or objectivity of the HCJP, or to render its decision-making process vulnerable to undue influence from the executive. The Court refers in that connection to its case-law where it has examined challenges against the Turkish courts' independence and impartiality by reason of the appointment of judges by the HCJP as chaired by the Minister of Justice, which can be applied here

by analogy (see, *mutatis mutandis*, *İmrek v. Turkey* (dec.), no. 57175/00, 28 January 2003; *Bolukoç and Others v. Turkey* (dec.), no. 35392/04, 16 September 2008; *Gurban v. Turkey* (dec.), no. 4947/04, 13 November 2008; *Bayar and Gürbüz v. Turkey*, no. 37569/06, § 20, 27 November 2012; and *Belek and Özkurt v. Turkey (no. 2)*, no. 28470/08, § 24, 17 June 2014).

63. The Court also notes in that connection that the judges who dealt with the applicant's case at the Istanbul 8th Assize Court had been appointed, like all other judges in Turkey, by the HCJP, following the same appointment procedure. They had equal status to any other judge serving in other assize courts and were entitled to the same constitutional safeguards and procedural rights, including as regards their appointment, promotion, and dismissal. The sole difference pointed out by the applicant was the prohibition on the reassignment of the judges overseeing the relevant banking offences for a period of three years. In the Court's opinion, this "additional guarantee", as the applicant refers to it, does not appear to cast doubt on the independence or impartiality of the judges in question; to the contrary, it may be taken to further reinforce the power of the relevant judges to rule independently.

64. As to its judicial functioning, the Court observes that the judgments of the Istanbul 8th Assize Court were subject to the supervisory jurisdiction of the Court of Cassation upon appeal, as in other criminal cases processed by the assize courts, and that the entire procedure, including the appeal proceedings, was governed by the standard rules of procedure with no special provisions or limitations.

65. The Court therefore considers that aside from its special jurisdiction, the Istanbul 8th Assize Court presented no significant differences to an ordinary assize court in its establishment or functioning.

66. The applicant has based his fears of lack of independence also on the perceived political rivalry between the executive and his family, as well as the alleged statements of some members of the executive specifically targeting the Uzan family and the proceedings at issue (see paragraph 42 above). He has not, however, submitted any evidence to demonstrate that the relevant legal framework, with the safeguards noted in paragraphs 61-65 above, failed to provide adequate guarantees to exclude any objective doubt as to the absence of inappropriate pressure by the executive on the judges of the Istanbul 8th Assize Court in the performance of their judicial duties (compare *Daktaras v. Lithuania*, no. 42095/98, § 36, ECHR 2000-X; and contrast *Sacilor-Lormines*, cited above, § 67).

67. Having regard to the foregoing, and on the basis of the material before it, the Court cannot find that the applicant's case was reassigned to the Istanbul 8th Assize Court to affect the outcome of the case to his detriment, or that the Minister's involvement in the establishment of the Istanbul 8th Assize Court entailed a relationship of subordination between the judges on the bench and the executive. The Court stresses in this regard

that while it is not its role to assess whether there were valid grounds for the domestic authorities to assign a case to a particular court (see, *mutatis mutandis*, *Bochan*, cited above, § 71), it notes that the Government's argument, according to which the decision not to allocate the relevant cases to the Istanbul 1st Assize Court had been driven by the legitimate need to ensure the effective administration of justice in the field of banking offences (see paragraph 39 above), is not unreasonable.

68. The Court therefore considers that the applicant's doubts as to the lack of independence and impartiality of the Istanbul 8th Assize Court are not objectively justified in the circumstances. It concludes accordingly that there has been no violation of the applicant's right to an independent and impartial tribunal under Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

69. The applicant complained under Article 6 of the Convention that he had been convicted despite the absence of sufficient evidence against him; that the trial court had relied on unlawfully obtained evidence in its judgment; that the expert reports submitted to the trial court had been prepared by individuals who had been partial, who had lacked the necessary expertise and who had overstepped their bounds to make findings of a legal nature; and that evidence and statements in his favour had not been taken into consideration by the trial court, which had also amounted to a violation of his right to be presumed innocent.

A. The parties' submissions

70. The Government stated that in the reasoned judgment delivered on 21 February 2006, the Istanbul 8th Assize Court had set out in a detailed manner the charges against the applicant, including the factual events underlying those charges, had examined the evidence in the case file implicating the applicant, and had responded to all of the defence submissions made by the applicant on the basis of the evidence in the case file, including the expert reports. The evidence available to the trial court had made it clear that the applicant, as the vice-chairman of Merkez Yatırım, had known what the software programme provided to İmarbank had involved, how it could be used and what consequences such use would bring about, and that he had nevertheless agreed to take part in this enterprise in keeping with the instructions of his brother K.U., the co-accused. Relying on material evidence, the trial court had established that the programme developed by Merkez Yatırım had enabled fraudulent transactions on the part of İmarbank. Noting furthermore that Merkez Yatırım had not offered technical support services to any companies outside the Uzan Group, the trial court had pointed to the strong evidence

suggesting that that company may have been established for the sole purpose of facilitating İmarbank's unlawful financial dealings. The trial court had also clearly explained why the impugned entity had in fact constituted a criminal organisation within the meaning of the relevant domestic law provisions.

71. The Government argued, on the basis of the foregoing, that the Istanbul 8th Assize Court had reached its verdict after deliberating on all the evidence in the case file, including those for and against the applicant. The Government stressed in that connection that as a basic tenet of the principle of subsidiarity, domestic courts were better placed than the Court to evaluate and assess the evidence before them and to interpret and apply the national law to the facts of each case.

72. The applicant maintained his allegations, without responding to the Government's specific arguments.

B. The Court's assessment

73. The Court considers that the complaints raised by the applicant under this head, which mainly concern the assessment of the evidence against him by the first-instance court, fall to be examined under the first paragraph of Article 6 of the Convention.

74. It reiterates that it is not its function to deal with alleged errors of law or fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention, and that issues such as the weight attached by the national courts to given items of evidence or to findings or assessments in issue before them for consideration are normally not for the Court to review. The Court should not act as a fourth instance and will therefore not question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see, for instance, *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 83, 11 July 2017, and the cases cited therein). The Court further reiterates that a domestic judicial decision cannot be qualified as arbitrary to the point of prejudicing the fairness of proceedings unless no reasons are provided for it or if the reasons given are based on a manifest factual or legal error committed by the domestic court, resulting in a "denial of justice" (ibid., § 85).

75. In the present case, it does not appear from the documents before the Court that the applicant, who was assisted by a lawyer, was deprived of the opportunity to challenge the evidence against him in an adversarial procedure that offered the guarantees under Article 6 § 1 of the Convention. He had, furthermore, ample opportunity to put forward his arguments, which appear to have been carefully assessed against the large body of evidence in the case file by the Istanbul 8th Assize Court, as demonstrated by the detailed reasons provided by that court for its ruling (see

paragraphs 21-23 above). The Court stresses in this regard that the applicant has not argued that the trial court ignored any evidence that he had presented or refused to hear any witnesses that he had called.

76. The Court therefore sees no indication that the applicant was hindered in any manner from arguing his case effectively. To the extent that he criticised the trial court's assessment of the evidence before it, the Court reiterates that it has no general jurisdiction to consider whether domestic courts have appraised the evidence correctly or incorrectly; its task is to establish whether evidence produced for or against the accused was presented in such a way as to ensure a fair trial (see, for instance, *Lesnik v. Slovakia* (dec.), no. 35640/97, 8 January 2002, and the cases cited therein).

77. As for the allegation regarding the use of "unlawful evidence", the Court recalls that it is not its role to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether the applicant was guilty or not (see, for example, *Allan v. the United Kingdom*, no. 48539/99, § 42, 5 November 2002). In any event it notes that the Court of Cassation expressly stated in its judgment that the relevant evidence had not had any decisive influence on the outcome of the proceedings. The applicant did not, however, challenge that finding. Nor did he substantiate his complaints as to the inadequate and impartial nature of the expert opinion submitted to the case file. To the extent that the applicant argued that the experts had commented on legal issues that were outside of their remits, the trial court made it clear in its judgment that it had relied on the expert reports only in so far as they concerned technical issues requiring their expertise, and not for legal considerations (see paragraph 22 above)

78. Having regard to the foregoing, the Court discerns no grounds on which it could be concluded that the Istanbul 8th Assize Court acted in an arbitrary or manifestly unreasonable manner in performing its review of the facts and the evidence of the case, or that the proceedings leading to the applicant's conviction were otherwise contrary to the requirement of a fair hearing within the meaning of Article 6 § 1 of the Convention. This complaint is therefore manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 concerning the right to a tribunal established by law admissible;

2. *Declares* the complaint under Article 6 § 1 concerning the objective independence and impartiality of the Istanbul 8th Assize Court admissible;

3. *Declares* inadmissible the remainder of the application;

4. *Holds* that there has been no violation of Article 6 § 1 of the Convention with regard to the right to a tribunal established by law;

5. *Holds* that there has been no violation of Article 6 § 1 of the Convention with regard to the right to an independent and impartial tribunal;

Done in English, and notified in writing on 24 November 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Jon Fridrik Kjølbro
President