

## White Collar Crime - Turkey

### Graft probe and OECD Foreign Bribery Report

Contributed by **Gün + Partners**

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#### Introduction

#### Graft probe

#### Comment

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International Anti-corruption Day, on December 9 each year, aims to raise awareness of corruption and its destructive impact on society. In 2014 it was celebrated with the publication of the first-ever Foreign Bribery Report by the Organisation for Economic Cooperation and Development (OECD).

The report is an important international initiative in the fight against corruption. It examines 427 bribery cases concluded in member countries in the 15 years since the implementation of the OECD Anti-bribery Convention in 1999. The report reveals important facts and figures on all aspects of foreign bribery.<sup>(1)</sup> Among other things, it shows that only 17 out of 41 members of the convention concluded bribery investigations with a court decision and public procurement sanctions were rarely imposed.<sup>(2)</sup>

#### Graft probe

While such important developments were taking place internationally, Turkey marked the anniversary of the 'graft probe' initiated in December 2013. As reported worldwide, a number of high-level public officials, including four ministers of state and their family members, were subject to investigations, arrests and the confiscation of property following large-scale bribery and international trade violation accusations.

Some legislative work has also been undertaken while these investigations have been progressing, but it has moved in a rather strange direction. For example, amendments were made to introduce additional requirements for the confiscation of property and identification of communication decisions. Although they appear promising in terms of human and property rights protection, their effectiveness in practice will be tested this year.

On the anniversary of the investigations, members of Parliament protested against the publication ban on the investigations and accused the investigation commission of failing to take prompt action against the former ministers. Finally, on January 5 2015, the investigation commission made its decision and resolved not to send the case to the Supreme Criminal Tribunal, due to a lack of evidence of criminal activity. The confiscated goods and moneys were returned to the former suspects with interest.

Following the investigation commission's decision, the motion that opposition parties had tabled (ie, that the four former ministers should stand trial before the Supreme Criminal Tribunal) was voted on in Parliament. Two hundred and seventy-six yes votes out of the 550 members of Parliament would have been enough to send the ministers to the Supreme Criminal Tribunal. However, as of January 21 2015, none of the ministers have been sent to the Supreme Criminal Tribunal.

#### Comment

According to Transparency International statistics published on December 3 2014, Turkey ranks 64th out of 175 countries in the Corruption Perception Index. The Third Progress Report issued by the OECD in October 2014 reveals that Turkey has concluded only two bribery cases, despite being a member of the OECD for more than 10 years. The defendants were acquitted following the conclusion of the concerned

cases.

Turkey is G20 president for the 2015 term and it is apparent that the country has the necessary legislative tools to combat corruption, but needs to increase its level of detection and enforcement, as highlighted by the OECD's Foreign Bribery Report.

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## Endnotes

(1) According to the report, two-thirds of bribery occurred in four sectors:

- the extractive sector (19%);
- the construction sector (15%);
- the transportation and storage sector (15%); and
- the information and communication sector (10%).

In most cases, illegal payments were made to obtain public procurement contracts (57%) and clearance from customs procedures (12%). On average, bribes equalled almost 10% of the transaction value.

(2) How these investigations, which are few in number, were initiated is also highlighted in the report: 31% of bribery investigations were initiated by companies self-reporting. Self-reporters became aware of foreign bribery in their international operations primarily through internal audits (31%) and M&A due diligence procedures (28%). Only 13% of bribery investigations were initiated directly by law enforcement authorities.

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