APPLICATION/REQUÊTE N° 14206/88

K. v/TURKEY

K. c/TURQUIE

DECISION of 11 July 1989 on the admissibility of the application

DÉCISION du 11 juillet 1989 sur la recevabilité de la requête

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Article 25 of the Convention *: Application of the clause included by Turkey in its declaration, concerning judgments given after the declaration but relating to events which occurred prior to it.*

Competence ratione temporis *: Complaints concerning events occurring before the entry into force of a declaration accepting individual petition.*

Article 25 de la Convention *: Application de la clause insérée par la Turquie dans sa déclaration, concernant les jugements postérieurs à la déclaration mais portant sur des événements antérieurs à celle-ci.*

Compétence ratione temporis *: Griefs ayant trait à des événements antérieurs à la prise d'effet d'une déclaration d'acceptation du recours individuel.*

(TRANSLATION)

THE FACTS

The applicant is a Turkish national born in 1948 and resident in Istanbul. He has been retired since 1 November 1984.

Before the Commission he is represented by Mr. Cemalettin Yazibakan, a lawyer practising in Ankara.

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

The applicant worked in Turkey as a manual worker from 1959 to 1968 and from 1976 to 1984, during which periods he was insured through the Turkish social insurance scheme. He also worked in Switzerland from 1968 to 1976, during which period he was insured through the Swiss old age insurance scheme, into which he paid contributions for 87 months.

As from 1 January 1986 he became entitled to a retirement pension in Turkey, fixed by a decision of the Turkish Workers' Social Security Fund (hereafter referred to as the SSK) at the net sum of 24,856 Turkish pounds per month.

Following the applicant's request of 9 January 1986 for the transfer and reimbursement of the contributions he had paid in Switzerland, the SSK informed him, on 30 January 1986, that it had transferred to Turkey the total contributions paid, amounting to 14,979 Swiss francs (3,955,386 Turkish pounds at that time), on 29 November 1985. The SSK also informed the applicant that in determining the size of the adjustment to his pension it had taken into consideration not the total amount calculated in Turkish pounds of the contributions paid in Switzerland but the number of working days in respect of which he had paid contributions there.

The amount of the increase was fixed at 2,120 Turkish pounds per month. Thus, according to the SSK, the total amount of the contributions paid in Switzerland had been taken into account for the purpose of calculating the increase in pension and there was no longer any question of this sum being reimbursed to the applicant.

On 3 April 1986 the applicant's lawyer lodged an appeal against this decision by the SSK with the Ankara Industrial Tribunal (Is mahkemesi) No. 1. He asked the SSK to take into consideration, in calculating the applicant's pension, his total contributions in Switzerland, returning to him that portion of the sum in question which did not confer on him entitlement to any benefit.

On 13 November 1986 the Ankara Industrial Tribunal No. 1 upheld the appeal. It held that the SSK, in increasing the pension by 2,120 Turkish pounds per month, had taken into consideration only the sum of 370,136 Turkish pounds

out of all the contributions transferred from Switzerland and ruled that it should pay back to the applicant the rest of the money (i.e. 3,585,249 Turkish pounds).

The SSK appealed against that decision to the Court of Cassation. In a judgment dated 9 December 1986 the 10th Civil Division of the Court of Cassation set aside the Industrial Tribunal's judgment of 13 November 1986. It held that in determining the amount of pension payable the SSK was entitled to take into account only the number of days' work completed in Switzerland since, under the provisions of the Convention on Social Security between Switzerland and Turkey, contributions paid into an old age insurance scheme in respect of a particular period were regarded as equivalent in the two countries.

In a judgment dated 16 April 1987 the Industrial Tribunal, on rehearing the case, decided to maintain the judgment it had given on 13 November 1986.

The combined civil divisions of the Court of Cassation, having jurisdiction to decide an issue when the court of first instance decides to maintain its initial decision, confirmed in a judgment dated 24 February 1988 the decision of the 10th Civil Division of the Court of Cassation and finally rejected the applicant's appeal.

COMPLAINTS

The applicant alleges a violation of his right to the peaceful enjoyment of his possessions, guaranteed by Article 1 of Protocol No. 1. He claims that a large part of the total contributions paid in Switzerland was not taken into account by the SSK for the purpose of calculating the amount of the pension he receives in Turkey.

He also alleges a violation of Articles 4 and 5 of the Convention.

THE LAW

The applicant complains that the contributions he had paid into the Swiss old age insurance scheme were not taken into consideration in an equitable way for the purpose of determining the size of an adjustment to the retirement pension he receives in Turkey. In this connection he alleges a violation of Article 1 of Protocol No. 1 and of Articles 4 and 5 of the Convention.

However, the declaration made by the Turkish Government under Article 25 of the Convention states, *inter alia* : "This declaration extends to allegations made in respect of facts, including judgments based on such facts which have occurred subsequent to the date of deposit of the present declaration" (last paragraph of the declaration dated 28 January 1987).

The Commission points out that in this case the judgments of the Industrial Tribunal and the combined Civil Divisions of the Court of Cassation, although given on 16 April 1987 and 24 February 1988 respectively, relate to events

preceding the date of deposit of the declaration in question, i.e. 28 January 1987.

Consequently, the application is outside the competence of the Commission *ratione temporis* and must accordingly be rejected as incompatible with the provisions of the Convention, within the meaning of Article 27 para. 2.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.