AS TO THE ADMISSIBILITY OF

Application No. 34986/97
by Ayse AKIN
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 1 July 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA
A. ARABADJIEV

Ms M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 30 October 1996 by Ayse AKIN against the Netherlands and registered on 19 February 1997 under file No. 34986/97;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Turkish national, born in 1940, and resides in Amsterdam. Before the Commission she is represented by Ms M.D. van Aller, a lawyer practising in Amsterdam.

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

The applicant and her husband are the foster parents of the applicant's niece Sükran. On 5 September 1982, a son, Bahtiyar, was born to Sükran and her husband in Amsterdam. As from Bahtiyar's birth up to and including the third quarter of 1990, Sükran received child care benefits (kinderbijslag) for Bahtiyar under the General Child Care Benefits Act (Algemene Kinderbijslagwet - hereinafter referred to as "the Act").

In its decision of 18 August 1989, the First Instance Court (Sulh Hukuk Mahkemesi) of Ayancik (Turkey) noted that the applicant and her husband had remained childless, that their relatives Sükran and her husband had entrusted their child Bahtiyar as from his birth to the care of the applicant and her husband, and that the latter now sought to adopt Bahtiyar. Having established that all parties involved,

including Bahtiyar, agreed to this adoption, the First Instance Court pronounced Bahtiyar's adoption by the applicant and her husband.

Pursuant to this judgment, Bahtiyar's family name in official documents was changed to the applicant's family name, including his Turkish passport issued on 7 November 1989 and his Dutch passport issued on 12 June 1990. This change in Bahtiyar's family name was further annotated on 15 May 1990 in his birth certificate at the Register of births, deaths and marriages (Burgerlijke Stand) of Amsterdam under the specification that he had been adopted under Turkish law.

As from April 1990 Bahtiyar lives with the applicant and her husband and, on 9 May 1990, was registered as such in the Amsterdam Municipal Population Register (Bevolkingsregister).

At some unspecified point in time, the applicant requested child care benefits under the Act in respect of Bahtiyar as from the second quarter of 1990 up to and including the second quarter of 1991. By letter of 17 July 1991, the Social Insurance Bank (Social Verzekeringsbank) informed the applicant that her request was rejected as she did not meet the conditions for these benefits. This letter ended with the following paragraph:

(Translation)

> "We inform you that you may file an appeal against the above decision. To this end you should submit a, preferably reasoned, request for a so-called formal confirmation. Such a request needs to be received by us within a reasonable time (that is to say within two months). Failure to respect this time-limit may result in your request not being dealt with."

By letter of 11 February 1992, the Social Insurance Bank further informed the applicant that her request for child care benefits for Bahtiyar over the fourth quarter of 1991 was rejected as she did not meet the conditions for these benefits.

In order to be able to file an administrative appeal, the applicant's lawyer requested the Social Insurance Bank, by letter of 27 February 1992, to issue a formal confirmation (voor beroep vatbare beschikking) of the decisions of 17 July 1991 and 11 February 1992.

This formal confirmation was issued on 11 May 1992. According to this confirmation the applicant's request for formal confirmation of the decision of 17 July 1991 was inadmissible for not having been submitted within a reasonable time. In addition it was stated that the applicant did not meet the conditions for child care benefits for the period as from the second quarter of 1990 up to and including the second quarter of 1991. It was further stated that the applicant did not meet the conditions for child care benefits for the fourth quarter of 1991 as Bahtiyar could not be regarded as the applicant's own or foster child under the Act.

On 4 June 1992, the applicant filed an administrative appeal with the Appeals Tribunal (Raad van Beroep) of Amsterdam.

On 28 August 1992, the Social Insurance Bank transmitted the applicant's case-file to the Appeals Tribunal. On 30 December 1992, the Social Insurance Bank submitted a written reaction to the applicant's appeal to which the applicant responded by letter of 7 April 1993.

Following a hearing held on 28 January 1994, the Administrative Section of the Regional Court (Sectie Bestuursrecht Arrondissementsrechtbank) of Amsterdam, having replaced the Appeals Tribunal following statutory changes, rejected the applicant's appeal as ill-founded by judgment of 11 March 1994.

In its judgment the Regional Court noted that Bahtiyar's natural mother Sükran lives about 300 metres from the applicant, that she visits Bahtiyar nearly daily and that, until the beginning of 1991, she gave the applicant and her husband an amount of 300 Dutch guilders at regular intervals. It further noted that Sükran had transferred the child care benefits she had received for Bahtiyar for the second and third quarter of 1990 to the applicant's bank account and that the Social Insurance Bank had informed her on 8 October 1990 that this was not correct and that the applicant herself should apply for child care benefits for Bahtiyar.

Insofar as the applicant's request for formal confirmation had been declared inadmissible for having been submitted out of time, the Regional Court noted that, in conformity with the constant case-law of the Central Appeals Tribunal (Centrale Raad van Beroep), the applicant had been informed in the letter of 17 July 1991 of the existence and length of the period within which a formal confirmation for appeal purposes is to be requested and that the applicant's request had been submitted more than seven months after that date. It held that in these circumstances the Social Insurance Bank had correctly declared this request inadmissible for having been submitted out of time.

As regards the refusal to grant the applicant child care benefits for the fourth quarter of 1991, the Regional Court recalled that, according to the case-law of the Central Appeals Tribunal, a person's "own children" within the meaning of Article 7 of the Act are legitimate children under Dutch law, which status can be created by an adoption under Dutch law. Insofar as it concerns an adoption pronounced abroad, it depends on the circumstances of each case whether, for the purposes of the Act, a child can be considered as the adoptive parents' "own child". The Regional Court held that in the determination of this question it is important to determine whether the conditions for and the legal effects of a foreign adoption may be equated to those of an adoption under Dutch law.

Noting the differences in legal effects between adoption under Turkish law and adoption under Dutch law, i.e. that under Turkish law an adopted child remains an heir-at-law of its natural family and that the adoption under Turkish law may be reversed at all times, the Regional Court held that Bahtiyar could not be considered as the applicant's own child for the purposes of the Act.

As to the question whether Bahtiyar could be considered as the applicant's foster child for the purposes of the Act, the Regional Court recalled the case-law of the Central Appeals Tribunal, according to which a child may be considered as a foster child where it is maintained and cared for by foster parents as their own child. In addition to a financial tie between them there must be an emotional tie in the sense of a close exclusive relation - the foster parents replacing the natural parents - and the child may no longer find itself in the natural parents' sphere of influence.

Applying this case-law to the applicant's situation, and noting in particular that Bahtiyar's natural parents only live about 300 metres from the applicant, that they have regular contacts with Bahtiyar and have financially supported the applicant until the beginning of 1991, the Regional Court concluded that Bahtiyar could not be regarded as the applicant's foster child under the Act.

On 25 April 1994 the applicant filed an appeal with the Central Appeals Tribunal. On 23 December 1994 the Social Insurance Bank replied to the applicant's appeal and, by letter of 22 January 1996, the applicant made further submissions to the Central Appeals Tribunal including an argument that the Central Appeals Tribunal had violated Article 6 of the Convention by its failure to schedule a hearing. The applicant urged the Tribunal to examine her case at the shortest possible notice in order to avoid a further violation of Article 6 of

the Convention.

By judgment of 1 May 1996, following a hearing held on 13 March 1996, the Central Appeals Tribunal upheld the Regional Court's decision of 11 March 1994.

The Central Appeals Tribunal upheld the reasoning of the Regional Court as regards the decision to declare inadmissible for being out of time the applicant's request for formal confirmation of the decision of 17 July 1991.

As to the refusal to grant the applicant child care benefits for the fourth quarter of 1991 on the basis of the finding that Bahtiyar could not be considered as the applicant's own child or foster child under the Act, the Central Appeals Tribunal considered that the Regional Court had been correct in its reasoning and findings in respect of the question whether Bahtiyar could be considered as the applicant's own child.

After having considered the applicant's submissions as to the consequences under family and civil law (familierechtelijke gevolgen) of the Turkish adoption at issue, the Central Appeals Tribunal added that doubts could in fact arise as to the recognition of that adoption in the Netherlands legal order, since it concerned a child born in the Netherlands, holding also Dutch citizenship, and having parents residing in the Netherlands of whom the mother also holds Dutch citizenship.

In respect of the question whether Bahtiyar could be considered as the applicant's foster child for the purposes of the Act, the Central Appeals Tribunal held that this should be answered on the basis of its constant case-law, i.e. whether the foster parents could be considered as having replaced the natural parents, which must be shown by a narrow exclusive tie between the foster parents and the child.

The Central Appeals Tribunal found that this requirement had not been met in the present case. It specified that the natural parents were not prohibited from having regular contacts with their child, and it had not been made plausible that a full transfer of the tasks of care and education had taken place. In the present case, where since the departure of the child from its natural family uninterrupted and intensive contacts between them continued to exist, the Tribunal found that no specific point in time could be indicated on which these tasks had been fully transferred to the applicant and her husband. In this respect the Tribunal further pointed out that the applicant had submitted that Bahtiyar's adoption under Turkish law rather than under Dutch law had been a deliberate choice since an adoption under Turkish law allows a stronger remaining link with the natural parents.

In the light of these findings, the Central Appeals Tribunal concluded that the decisions at issue were not contrary to the applicant's rights under Articles 8, 12, 14 and 18 of the Convention.

As regards the applicant's complaint under Article 6 para. 1 of the Convention that the proceedings had exceeded a reasonable time, the Central Appeals Tribunal held that, even assuming that this requirement had not been respected, this could not lead to granting children allowance in violation of applicable statutory provisions.

B. Relevant domestic law and practice

At the relevant time a person wishing to contest a decision of an administrative organ in the field of social security schemes had to request formal confirmation in writing. Such formal confirmation, which included the grounds on which the decision was based, was an admissibility requirement for an administrative appeal.

Although there were no statutory time-limits under the various social security laws for requesting formal confirmation, the Central Appeals Tribunal ruled that this should be done within a "reasonable time", which that tribunal construed to mean generally within two months (cf., Centrale Raad van Beroep judgment of 19 March 1974, Rechtspraak Sociaal Verzekeringsrecht 1974, no. 288). An administrative organ might declare inadmissible such a request if it was filed too late. A decision of an administrative organ declaring a request for formal confirmation inadmissible was itself a decision of which formal confirmation might be requested with a view to an appeal.

There was no statutory time-limit within which formal confirmation had to be given.

When formal confirmation had been issued, an appeal lay to the Appeals Tribunal. It had to be lodged within one month (Article 83 of the Appeals Act).

From the Appeals Tribunal a further appeal lay to the Central Appeals Tribunal (Article 145 of the Appeals Act); it too had to be lodged within one month.

On 1 January 1994 the Administrative Law Act (Algemene Wet Bestuursrecht) entered into force (cf. Eur. Court HR, Van de Hurk v. the Netherlands judgment of 19 April 1994, Series A no. 288, p. 15, para. 39). It lays down new uniform rules of administrative procedure which apply also to cases such as the present one.

Anyone wishing to challenge a decision of an administrative organ may lodge an administrative objection with that body, provided that he or she does so within six weeks (Article 6:7).

If the administrative organ fails to decide within a reasonable time, or refuses to do so, the party seeking review may lodge an appeal with the Regional Court without waiting any longer for a decision (Articles 6:2, 6:12 and 8.1.1). It is thus no longer necessary to request formal confirmation of a decision of an administrative organ.

A further appeal lies to the Central Appeals Tribunal (Article 18 of the Appeals Act).

Adoption under Dutch law, is subject to a number of conditions set out in Article 228 of the Netherlands Civil Code (Burgerlijk Wetboek), which include amongst others that:

- the child must be younger than fifteen at the time of the first request for adoption. If the child is older than fifteen, it must have no objections to the adoption;
- the child may not be the natural or legitimate grandchild of the adopting parents;
- each of the adopting parents must be at least eighteen years and maximum fifty years older than the child; and
- the child must have been cared for and educated in the family of the adopting parents for a period of at least one year.

As a result of an adoption under Dutch law, the adopted child becomes the legitimate child of its adoptive parents and the legal family relations between the child and its natural parents cease to exist. The adopted child obtains the family name of the adoptive father and becomes an heir-at-law of its adoptive parents and other new relatives. The adoptive parents are to respect all statutory obligations parents have in respect to their children. Although under Dutch law adoption is in principle irreversible, an adopted child may request the Regional Court within a period between two and three years after coming of age to reverse the adoption, the reasonability of the request and the adopted child's interest being the criteria to be applied in the determination of such a request (Article 231 of the

Netherlands Civil Code).

Adoption is dealt with in Articles 253-258 of the Turkish Civil Code (Nedeni Kanun). Under Turkish law an adopted child does not obtain the status of a legitimate child of its adoptive parents. The child concerned does, on the other hand, obtain the family name of its adoptive parents and becomes an heir-at-law of the adoptive parents. All rights and obligations of the natural parents are transferred to the adoptive parents. There are no age limits in respect of the child to be adopted. An adoptive parent must at least be thirty-five and there must be an age difference of at least eighteen years between the child and the adoptive parent.

Where a child has been adopted abroad by parents residing in the Netherlands who wish to have the foreign adoption and the ensuing legal effects formally and fully recognised in the Netherlands, the adoptive parents may seek recognition of the foreign adoption by a Dutch judge. In such proceedings, the Dutch judge will apply the conditions for adoption under Dutch law although the judge may take the nationality of all parties involved including the links between the parties and the legal system of their country of origin into account. If no such recognition is sought it is nevertheless possible that certain legal effects are recognised without any judicial intervention in the Netherlands depending on the particular circumstances of each case.

In an unpublished judgment of 8 April 1987 of the Regional Court of Utrecht, submitted by the applicant, it was held that, pursuant to unwritten rules of Dutch international private law, an adoption judgment pronounced by a Turkish court in respect of a minor Turkish national has the same legal consequences in the Netherlands legal order as it has in the Turkish legal order and that for the acceptance of these consequences in the Netherlands no further decision is required. The Regional Court added, however, that an exception to this rule is made where the above legal effects are inconsistent with Dutch ordre public. After an ex officio examination of whether there were facts and circumstances which should lead to a finding that a recognition of the Turkish adoption judgment at issue would be contrary to Dutch ordre public and after having found that a further investigation was not required, the Regional Court concluded that the Turkish adoption judgment at issue was to be recognised.

In order to meet the expenses for the care and education of children younger than eighteen parents insured under the General Child Care Benefits Act may be granted benefits under this Act. It is one of the general social insurances (volksverzekeringen) in the Netherlands. It is to be differentiated from the employment related social security schemes (werknemersverzekeringen) in the Netherlands.

The insured under this Act are in principle all persons younger than 65 years of age who either reside in the Netherlands or who do not reside in the Netherlands but are gainfully employed there and subject to payment of Dutch income taxes. Entitlement to benefits under the Act is not subject to the condition that the person concerned has contributed to the scheme (see Eur. Court HR, Van Raalte v. the Netherlands judgment of 21 February 1997, Reports of Judgments and Decisions 1997-I, pp. 180-182. paras. 21-28).

Article 7 para. 1 under a. and b. of the General Child Care Benefits Act reads as follows:

(Translation)

"Pursuant to the provisions of this Act the insured is entitled to children's allowance for his own children and stepchildren for whom he provides care and maintenance provided these children:

- are younger than sixteen years of age and belong to his household;
- are younger than sixteen years of age, not belonging to his

household, and who are maintained to an important extent at his expense."

COMPLAINTS

1. The applicant complains under Article 6 para. 1 of the Convention that she did not receive a fair hearing in the proceedings at issue in that it was found that she had not filed her request for a formal confirmation within a reasonable time whereas, due to the unclear wording of the letter of 17 July 1991, it was unclear to her that this period had already started to run.

2. The applicant further complains under Article 6 para. 1 of the Convention that she did not receive a fair trial in that the Dutch courts at issue incorrectly found that an adoption under Turkish law cannot be equated to an adoption under Dutch law and, consequently, concluded that Bahtiyar could not be considered as the applicant's own child or foster child under the relevant provisions of the General Child Care Benefits Act.

3. The applicant also complains that the proceedings have exceeded a reasonable time within the meaning of Article 6 para. 1 of the Convention

4. The applicant complains that the refusal of the Dutch administrative courts to accept her adoption of Bahtiyar and thus deny the consequential legal effects under Dutch law is contrary to her rights under Article 8 of the Convention.

5. The applicant complains that the Dutch administrative courts' refusal to acknowledge that she, her husband and Bahtiyar together form a family is contrary to Article 12 of the Convention.

6. The applicant complains that the Dutch administrative courts' refusal to accept Bahtiyar as her own child deprives him of the personal security and safety guaranteed to him by Article 5 of the Convention.

7. The applicant complains that the Dutch administrative courts' refusal to accept her adoption of Bahtiyar under Turkish law constitutes treatment which discriminates between children adopted under Turkish law who have subsequently sought formal recognition of this adoption from a Dutch judge and children adopted under Turkish law who have not sought a subsequent recognition from a Dutch judge.

8. The applicant finally complains under Article 1 of Protocol No. 1 that, given the finding of the Central Appeals Tribunal that Bahtiyar cannot be considered as the applicant's own child since he is still an heir-at-law of his natural parents, he is unjustly deprived of his inheritance, i.e. the future inheritance of his parents. The applicant further submits that, according to the Netherlands authorities, one has to choose between either seeking a recognition of a Turkish adoption and consequently losing the right to inherit or waiving the right to benefits under the General Child Care Benefits Act by not seeking a recognition from a Dutch judge of an adoption under Turkish law.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention:

- that she did not receive a fair hearing in the proceedings at issue in that it was found that she had not filed her request in time for a formal confirmation of the decision stated in letter of 17 July 1991;

- that she did not receive a fair trial in that the Dutch courts at issue incorrectly found that an adoption under Turkish law cannot be equated to an adoption under Dutch law; and

- that the proceedings have exceeded a reasonable time within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

Article 6 para. 1 (Art. 6-1) of the Convention, insofar as relevant, reads:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by a ... tribunal ..."

a. The Commission considers that the proceedings at issue can be regarded as constituting a determination of the applicant's civil rights and obligations within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention and thus fall within the scope of this provision (cf. Eur. Court HR, Duclos v. France judgment of 17 December 1996, Reports of Judgments and Decisions 1996-VI, pp. 2179-2180, para. 53).

As to the findings of the domestic courts in the applicant's case, the Commission recalls that under the terms of Article 19 (Art. 19) of the Convention the Commission is not competent to examine alleged errors of fact or law committed by national courts, except where it considers that such errors might have involved a possible violation of the rights and freedoms set forth in the Convention (cf. No. 25062/94, Dec. 18.10.95, D.R. 83, p. 77).

The Commission notes that the applicant's case was determined following adversarial proceedings before the Regional Court and, subsequently, the Central Appeals Tribunal. It has not been submitted nor has it appeared that the applicant was not or was insufficiently enabled to state her case and to submit whatever she found relevant to the outcome. In these circumstances, the Commission finds no indication that the proceedings at issue fell short of the requirements of Article 6 (Art. 6) as regards fairness of proceedings.

As indicated above, the conclusions reached by the courts in the applicant's case as regards the admissibility of the applicant's request for formal confirmation of the decision stated in the letter of 17 July 1991 or the legal effects of an adoption under Turkish law for the purposes of obtaining an allowance under the Netherlands General Child Care Benefits Act cannot, as such, be reviewed by the Commission under the terms of Article 19 (Art. 19) of the Convention.

It follows that this part of the application must be rejected for being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

b. As to the applicant's complaint under Article 6 para. 1 (Art. 6-1) of the Convention of the length of the proceedings, the Commission considers that it cannot, on the basis of the case-file, determine the admissibility of this complaint at this stage and considers that it is therefore necessary to give notice of this part of the application to the respondent Government in accordance with Rule 48 para. 2(b) of its Rules of Procedures and to invite them to submit their observations in writing on the admissibility and merits of this part of the application.

2. The applicant further complains that the refusal of the Dutch administrative courts to accept her adoption of Bahtiyar and thus deny the consequential legal effects under Dutch law is contrary to her rights under Articles 8 (Art. 8) of the Convention.

Article 8 (Art. 8) of the Convention, insofar as relevant, reads:

"Everyone has the right to respect for his private and family life ..."

The Commission recalls that the right to adopt is not, as such, included among the rights and freedoms guaranteed by the Convention and that there is no positive obligation for Contracting States under Article 8 (Art. 8) of the Convention to grant to a person the status of adoptive parent or adopted child (cf. No. 31924/96, Dec. 10.7.97, D.R. 90, p. 134).

However, a State cannot separate two persons united by an adoption contract, or forbid them to meet, without engaging its responsibility under Article 8 (Art. 8) of the Convention (cf. No. 6482/74, Dec. 10.7.75, D.R. 7, p. 75). However, the case-file does not disclose that such a situation arises in the applicant's case.

The Commission is therefore of the opinion that the facts of the case do not disclose a violation of the applicant's rights under Article 8 (Art. 8) of the Convention.

It follows that this complaint must be rejected for being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains that the Dutch administrative courts' refusal to acknowledge that she, her husband and Bahtiyar together form a family is contrary to Article 12 (Art. 12) of the Convention.

Article 12 (Art. 12) of the Convention provides:

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

The Commission recalls that the adoption of a child by a couple might, in certain circumstances, be said to constitute the foundation of a family. However, Article 12 (Art. 12) of the Convention does not guarantee a right to adopt or otherwise integrate into a family a child which is not the natural child of the couple concerned (cf. No. 7229/75, Dec. 15.12.77, D.R. 12, p. 32).

The Commission notes that the applicant and Bahtiyar both permanently reside in the Netherlands, but that the applicant has not sought to obtain a formal recognition under Dutch law of Bahtiyar's adoption in Turkey. Moreover it appears that it was an explicit choice of the applicant to adopt him under Turkish law rather than under Dutch law given the differences in the legal effects of adoption under both legal systems.

In these circumstances, the Commission cannot find that the decisions at issue were contrary to the applicant's rights under Article 12 (Art. 12) of the Convention.

It follows that this complaint must also be rejected for being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant complains that the Dutch administrative courts' refusal to accept Bahtiyar as her own child deprives him of the personal security and safety guaranteed to him by Article 5 (Art. 5) of the Convention.

Article 5 (Art. 5) of the Convention prohibits unlawful and arbitrary deprivation of liberty and guarantees certain rights to persons deprived of their liberty. The Commission finds no issue under

this provision in the present case.

It follows that this complaint must also be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant complains that the Dutch administrative courts' refusal to accept her adoption of Bahtiyar under Turkish law constitutes treatment which discriminates between children adopted under Turkish law who have subsequently sought formal recognition of this adoption from a Dutch judge and children adopted under Turkish law who have not sought a subsequent recognition from a Dutch judge.

Article 14 (Art. 14) of the Convention reads:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission recalls that Article 14 (Art. 14) of the Convention complements the other substantive provisions of the Convention and its Protocols and that there can be no room for its application unless the facts of the case fall within the scope of one of more of such provisions. It safeguards individuals placed in relevantly similar situations from discrimination. A difference in treatment is contrary to Article 14 (Art. 14) if is has no objective and reasonable justification (cf. No. 20769/92, Dec. 29.6.94, D.R. 78, p. 111; and No. 23419/94, Dec. 6.9.95, D.R. 82, p. 41).

The Commission notes that the applicant seeks to compare the situation of children adopted abroad in respect of whom recognition has been sought from a Dutch judge and children adopted abroad in respect of whom no such recognition has been sought.

Even assuming that the matter raised by the applicant would fall within the scope of the Convention, the Commission does not find that these two categories of adopted children find themselves in a relevantly similar situation which would enable a comparison to be made for the purposes of Article 14 (Art. 14) of the Convention.

It follows that this complaint must also be rejected for being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

6. The applicant finally complains under Article 1 of Protocol No. 1 (P1-1) that - given the finding of the Central Appeals Tribunal that Bahtiyar cannot be considered as the applicant's own child since he is still an heir-at-law of his natural parents - he is unjustly deprived of his inheritance, i.e. the future inheritance of his parents. The applicant further submits that, according to the Netherlands authorities, one has to choose between either seeking recognition of a Turkish adoption and consequently losing the right to inherit or waiving the right to benefits under the General Child Care Benefits Act by not seeking a recognition from a Dutch judge of an adoption under Turkish law.

Article 1 of Protocol No. 1 (P1-1) provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair

the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission understands the present complaint as consisting of two elements; the first one concerning Bahtiyar's position as an heir-at-law and the second one the applicant's entitlement to child care benefits in respect of Bahtiyar.

As regards the first element, the Commission observes in the first place that no complaint has been lodged by or on behalf of Bahtiyar with the Commission as regards the consequences of the decision at issue in respect of his inheritance rights. Consequently, under the terms of Article 25 (Art. 25) of the Convention, the Commission cannot consider this aspect of the present complaint.

The Commission further does not find it established that the domestic courts' conclusion that Bahtiyar cannot be considered as the applicant's adopted son for the purposes of the Act, as such, deprives the applicant of the possibility to appoint him as her heir.

As to the second element of the present complaint, the Commission notes at the outset that it does not appear from the applicant's submissions that she has relied on Article 1 of Protocol No. 1 (P1-1), either in form or in substance, in the proceedings before the domestic courts, which is one of the requirements for exhaustion of domestic remedies within the meaning of Article 26 (Art. 26) of the Convention (cf. No. 19601/92, Dec. 19.1.95, D.R. 80, p. 46).

Even assuming that the applicant would have complied with this requirement and even assuming that the benefits at issue can be regarded as a pecuniary right for the purposes of Article 1 of Protocol No. 1 (P1-1) (cf. Eur. Court HR, Gaygusuz v. Austria judgment of 16 September 1996, Reports of Judgments and Decisions 1996-IV, pp. 1141-1142, paras. 39-41), the Commission considers that neither this provision nor any other provision of the Convention guarantees, as such, a right that decisions by a foreign judicial authority obtain immediate legal effect in a given domestic jurisdiction without any form of judicial recognition in the latter legal order.

Moreover, the Commission notes that a Dutch judicial recognition of Bahtiyar's adoption by the applicant under Turkish law is not necessarily a conditio sine qua non for the applicant obtaining child care benefits in respect of Bahtiyar, since such benefits may also be granted to a foster child provided it is established that the foster parents have fully replaced the natural parents as regards the care and education of the child concerned. Noting the particular circumstances of the present case, the Commission cannot find the domestic courts' conclusion as regards this point to be unreasonable or arbitrary.

The Commission is therefore of the opinion that the decision complained of cannot be regarded as contrary to the applicant's rights under Article 1 of Protocol No. 1 (P1-1).

It follows that this part of the application must be rejected for being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission,

DECIDES TO ADJOURN the examination of the applicant's complaint that the proceedings have exceeded a reasonable time; and

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

J.-C. GEUS
President
of the Second Chamber