AS TO THE ADMISSIBILITY OF

Application No. 23887/94
by Süleyman EGE
against Turkey

The European Commission of Human Rights (First Chamber) sitting in private on 5 March 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, 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 23 February 1994 by Mr. Süleyman Ege against Turkey and registered on 14 April 1994 under file No. 23887/94;

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, a Turkish citizen born in 1931 and resident in Ankara, is a publisher.

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

In 1982 the Ankara Martial Law Command ordered the seizure of 30 different books published by the applicant and forcibly closed the premises of his Publishing House. 133.607 copies of these books were seized by the police on the orders of the Martial Law Command.

On 26 May 1985 the National Security Committee had decided to lift the Martial Law as from 3 July 1985.

On 28 May 1985 the Ankara Martial Law Command ordered the destruction of the seized books.

On 3 June 1985 the books were burnt and completely destroyed under the supervision of three military and one civilian staff of the Ankara Martial Law Command.

On 8 August 1985 the applicant applied to the Prime Minister's Office and asked for compensation of his losses. His request remained

unanswered.

On 28 November 1985, the applicant instituted proceedings for compensation against the Prime Minister's Office. Without prejudice to claim the damages in excess, he asked for a compensation of 115 million Turkish Lira for pecuniary damages, being the estimated value of the destroyed books as on October 1985, and 25 million Turkish lira for non pecuniary damages. He also claimed legal interest to run as from 28 August 1982.

In a decision dated 27 June 1989 the Ankara Administrative Court, found the Prime Minister's Office responsible for the damages. It, however, granted the applicant only 35.481.450 Turkish Lira as compensation for pecuniary damages. The Court, based its assessment of the damages on the estimated 1982 value of the books. It found no grounds to grant compensation for non-pecuniary damages.

The applicant appealed.

In a decision dated 17 April 1990 the Council of State quashed the decision of the Ankara Administrative Court. As regards the pecuniary damages, it held that the compensation should have been assessed on the basis of 1985 value of the books. It also held that applicant's claim for non-pecuniary damages should have been granted.

The Ankara Administrative Court, having regard to the decision of the Council of State, applied for an expert opinion in order to have the damages suffered by the applicant evaluated. In a report dated 7 June 1991, the experts stated that the value of the books in 1985 was of 121.637.695 Turkish Lira. In a report dated 8 July 1991, the experts, in addition to their prior conclusion, commented that the estimated 1991 value of the books at question was not less than 2.067.840.815 Turkish lira.

On 21 June 1991 the applicant submitted a statement to the Court, whereby he requested, as his additional losses, the difference between his original claim for pecuniary damages (115 million Turkish Lira plus legal interest) and the then current value of the books estimated by the Experts (2.067.840.815 Turkish Lira). He asserted that having regard to the estimated then current value of the destroyed books, his real losses could not be fully compensated, even if the Court would grant his original claim.

On 26 September 1991 the Ankara Administrative Court decided that the Prime Minister's Office should pay the applicant a compensation of 115.000.000 Turkish Lira for pecuniary damages together with legal interest to be applied as from 8 August 1985. It also granted a compensation of 25 million Turkish Lira for non-pecuniary damages. The Court held that although the experts had commented that the value of the books in 1985 was of 121.637.695 Turkish Lira, it was not authorised by law to grant any amount in excess of the original claim.

The applicant appealed. He, inter alia, reiterated the arguments which he had raised in his statement to the Ankara Administrative Court dated 21 June 1991. The Administration also appealed and asserted that the applicant was not entitled to any compensation.

In a judgment dated 7 April 1993, the Council of State dismissed the appeal. It held that "the fact that the Ankara Administrative Court had limited the award to 115.000.000 Turkish Lira, as claimed by the applicant, did not contravene the Administrative Law.

The Administration requested the rectification of this decision (karar düzeltmesi). The applicant did not apply for rectification or make any submission in reply to the Administration's request.

On 20 October 1993 the Council of State dismissed the

Administration's request.

At the time when he lodged his application with the Commission, the applicant had not received the compensation award. He has later informed the Commission that he had finally received 458.233.000 Lira as compensation for his losses, which included legal interest until the date of payment. The applicant was paid 451.400.000 Lira on 1 March 1994 and 6.833.000 Lira on 20 July 1994.

COMPLAINTS

1. The applicant complains under Article 6 para. 1 of the Convention that he did not have a fair trial in the proceedings for compensation in that, the Ankara Administrative Court and the State Council failed to consider his additional claim for compensation and while ruling on the merits, failed to reply to his arguments.

2. The applicant also complains under Article 1 of Protocol No. 1 that the destruction of his books constituted an unjustified deprivation of his possessions.

3. The applicant lastly complains under Article 1 of Protocol No. 1 of an unjustified interference with his right to respect for his possessions to the extent that he has not been fully compensated for his real losses arising from the destruction of his books. He asserts in this regard that the rate of legal interest which applied to his compensation claim for a period of nine years between the date of introduction of his claim in 1985 and the date of payment in 1994 was lower than the rates of inflation during that period.

THE LAW

1. The applicant complains that he did not have a fair trial in the proceedings for compensation, in that the Court did not consider his request for compensation for his additional losses and while ruling on the merits, failed to reply to his arguments. He invokes Article 6 para. 1 (Art. 6-1) of the Convention which, in so far as relevant provides:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by [a] ... tribunal established by law".

The Commission notes that Turkey has recognised the competence of the Commission to receive individual petitions under Article 25 (Art. 25) of the Convention only in relation to allegations made in respect of the facts, including judgments which are based on such facts, which have occurred subsequent to 28 January 1987. It must therefore, in the first place, decide whether and to what extent it is competent ratione temporis under Article 25 (Art. 25) of the Convention to examine the applicant's complaints.

The Commission recalls that the proceedings before a court are embodied in its final decision which thus incorporates any defect by which they may have been affected (see, No. 6916/75, Dec. 8.10.76, D.R. 6, pp. 107, 111; see also, mutatis mutandis, H. v. Finland, Comm. Report 5.4.95, para. 99). The Commission observes that in the present case, the proceedings were concluded by the decision of the Court of Cassation dated 20 October 1993, that is after Turkey's recognition of the Commission's competence to receive individual petitions. Therefore as regards the complaint in question, the proceedings at issue fall within the Commission's competence ratione temporis.

However, the Commission recalls that in accordance with Article 26 of the Convention, "it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law ..." In particular, the

obligation to exhaust domestic remedies is limited to making normal use of the remedies which are likely to be effective, adequate and accessible (see e.g., No. 15117/89, Dec. 16.1.95, D.R. 80, p. 5).

The Commission recalls that in administrative proceedings in Turkey, a request for rectification of judgment, in principle, constitutes an effective and accessible remedy within the meaning of Article 26 (Art. 26) of the Convention (cf. No. 20704/92, Kalaç v. Turkey, Dec. 10.1.95, unpublished).

However, in the present case, the applicant did not apply for the rectification of the Council of State's decision dated 7 April 1993 or bring his arguments before the Council of State in reply to the Government's petition for rectification. Moreover the Commission does not find any special circumstances which could dispense the applicant from the obligation to apply for the rectification of judgment in order to exhaust domestic remedies (cf. No. 16278/90, Karaduman v. Turkey, Dec. 3.5.93, D.R. 74, p. 93).

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and this part of the application must therefore be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant also complains that the destruction of his books amounted to an unjustified interference with his right to peaceful enjoyment of his possessions. He invokes Article 1 of Protocol No. 1 (P1-1) which in so far as relevant reads as follows:

> "Every natural ... 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".

As the Commission observed above, Turkey has recognised the competence of the Commission to receive individual petitions under Article 25 (Art. 25) of the Convention only in relation to allegations made in respect of the facts, including judgments which are based on such facts, which have occurred subsequent to 28 January 1987.

In the present case, however, the Commission notes that the destruction of the books took place on 3 June 1985, which is before the afore-mentioned date.

It follows that this part of the application is outside the competence ratione temporis of the Commission and therefore incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

3. The applicant lastly complains of a violation of Article 1 of Protocol No. 1 (P1-1) in that, he was not fully compensated for his real losses arising from the destruction of his books in so far as the rate of legal interest which applied to his compensation claim for a period of nine years between the date of introduction of his claim in 1985 and the date of payment in 1994 was lower than the rates of inflation during that period.

The Commission finds that in so far as the applicant's complaint can be understood as relating to the adequacy of the sum awarded by the national courts on 20 October 1993 as due to the applicant by way of principal and interest, it falls outside the Commission's competence ratione materiae, since until the national courts had determined that compensation was payable and the amount of any such compensation, the applicant had no "possession" within the meaning of Article 1 of Protocol No. 1 (P1-1): at most he had a legitimate expectation that his claim for compensation would be determined by the courts in accordance

with national law and this was fulfilled.

In so far as the complaint can be understood as being related to the inadequacy of the legal interest which applied to the compensation award from 20 October 1993 until the payment date, the Commission observes that the major part of the compensation was paid on 1 March 1994, i.e., four months and ten days after the final decision. Therefore the delay in the payment of the compensation award was not unduly lengthy. The Commission further notes that the legal interest continued to apply until the date of payment. In these circumstances, the Commission finds that there has been no interference with the applicant's right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 (P1-1).

It follows that this part of the application manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber President of the First Chamber

(M.F. BUQUICCHIO) (C.L. ROZAKIS)