AS TO THE ADMISSIBILITY OF

Application No. 24128/94
by Cevat ISIK
against Turkey

The European Commission of Human Rights (First Chamber) sitting in private on 29 November 1995, 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. MARXER
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 12 January 1994 by Cavet Isik against Turkey and registered on 11 May 1994 under file No. 24128/94;

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

A. Particular circumstances of the case

The applicant is a Turkish citizen born in 1938 and resident in Istanbul.

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

I

On 26 September 1986 the applicant bought a piece of land in Gökçeada.

Subsequently the applicant started the construction of a house which was completed in February 1987.

On 21 May 1987 the applicant instituted proceedings against the Treasury and requested the registration of the land and the house in his name. He submitted that the seller had acquired the property in consequence of long term bona fide possession. As the seller had not registered his title before selling the property, no record of title existed in the land registry.

On 21 March 1988 the the Gökçeada Court of First Instance (Asliye Hukuk Mahkemesi) granted, in part, the applicant's request. The Court observed that a house had been constructed on the land. It noted that the applicant's request had been duly notified to the public and that there had been no objection by third parties to the registration of the property in the applicant's name within a period of three months provided for in the law. Noting that the land was divided into two plots by a public road, it ordered the registration of the plot on which the house had been erected and dismissed the claim for the remainder of the land.

The Treasury appealed against this judgment.

On 6 September 1988 the Court of Cassation upheld the decision of the Gökçeada Court of First Instance.

On 3 April 1989 the applicant's title on the land and the house was registered in the Gökçeada Land Registry.

II

On 29 March 1988, while the proceedings for registration were pending before the Court of Cassation, the applicant applied to the Gökçeada Municipality and requested a permit to occupy the house.

On 23 May 1988, the Gökçeada Municipality informed the applicant that on 1 April 1988 the Gökçeada Army-corps Command had ordered the demolition of his house because his land was located in a restricted military zone to which Law no. 2565 (Law on the Restricted Military Zones and Security Zones -2565 sayili Askeri Yasak Bölgeler ve Güvenlik Bölgeleri Kanunu-) applied. The applicant had failed to obtain the military authorities' prior approval for his construction in accordance with that law. The Municipality further informed the applicant that the construction had been carried out without first obtaining a construction permit under the Law no. 3194 (Construction Law -3194 sayili Imar Kanunu). The applicant was requested to remove the house in accordance with the demolition order.

On 8 June 1988, the Gökçeada Regimental Command, referring likewise to the decision of the Army-Corps Command dated 1 April 1988, ordered the demolition of the house within 15 days. The applicant was informed that in case of his failure to observe this request, the building would be demolished by the authorities.

In a communication to the Gökçeada Regimental Command and the Army-corps Command dated 23 June 1988, the applicant challenged the decisions of 1 April 1988 and 8 June 1988.

III

On 8 September 1988, before the house was demolished, the applicant applied to the Bursa Administrative Court and sought the annulment of the decisions of the Gökçeada Municipality and the Gökçeada Regimental Command dated 23 May 1988 and 8 June 1988 respectively.

The applicant relied, inter alia, on the decision of the Gökçeada Court of First Instance ordering registration of the property in his name. He further alleged an implied approval of the authorities on account of their failure to contest the registration within the three months' period. In this context, he admitted that he had received the Municipality decision of 23 May 1988 on the 28th of the same month.

On 26 December 1988 the building was demolished.

On 26 April 1991 the Bursa Administrative Court dismissed the

action. The Court noted that in 1962, the area in which the applicant's land was located, had been declared a second degree restricted military zone. It held that, as the applicant had constructed the house without the prior approval of the military authorities, the demolition order was lawful in accordance with Article 8 paras. f and g of the Law no. 2565. The Court further found that the measures taken by the Municipality to demolish the house were in compliance with Article 32 of the Law no. 3194.

The applicant appealed.

On 24 December 1992 the Council of State dismissed the appeal. It endorsed the reasons given by the Bursa Administrative Court.

The applicant requested the rectification of the decision dated 24 December 1992. On 19 November 1993 the Council of State dismissed this request.

IV

The applicant subsequently instituted proceedings for compensation against the Mayor of Gökçeada and the Regimental Commander. He, inter alia, invoked their civil liability.

On 6 September 1991 the Gökçeada Court of First Instance dismissed the action. The Court held that there was no personal fault attributable to the defendants, although not excluding that the demolition of the house might have involved the liability of the administration.

The applicant did not appeal against this judgment.

V

On 5 June 1989 the applicant filed a complaint with the Public Prosecutor of Gökçeada and sought the opening of criminal proceedings against the Mayor of Gökçeada. On 16 June 1989 the Public Prosecutor issued a decision of non-jurisdiction. He held that as the Mayor was a civil servant, the investigation of the matter fell within the jurisdiction of the County Administrative Board (ilçe idare Kurulu).

In 1990 the applicant filed another complaint with the Public Prosecutor of Çanakkale against the Mayor. He, inter alia, reiterated the same allegations. On 21 June 1990 the Public Prosecutor of Çanakkale, likewise, issued a decision of non-jurisdiction.

B. Relevant domestic law

Law no. 2565 (Law on the Restricted Military Zones and Security Zones)

Article 1 of Law no. 2565, in so far as relevant, provides:

<translation>

"The scope of this law is as follows:

a) To establish the principles and procedure of setting up, abolishing and, in case of necessity, expanding the borders of ... restricted military zones around ... the military premises, military regions and the frontiers, which are of vital importance for the defence of the Territories, in order to safeguard their security and secrecy ..."

<original>

"Bu kanunun amaci;

a) Yurt savunmasi bakimindan hayati önemi haiz askeri tesisler ve bölgeler ile sinirlarin güvenlik ve gizliligini saglamak için bunlarin çevrelerinde kara ... askeri yasak bölgelerinin ... kurulmasi, kaldirilmasi ve gerektiginde genisletilmesine iliskin esas ve yöntemlerin düzenlenmesidir."

Article 8 paras. f and g:

In accordance with Article 8 para. f, in order to carry out constructions, excavations and make modifications on a land falling within a "second degree restricted military zone", it is obligatory for the sake of secrecy and defence of the region to obtain the prior approval of the authorised Command before a construction permit is issued by the relevant authorities.

Article 8 para. g provides that any and all constructions and acts for which the military authorities' prior approval had not been obtained shall be stopped. Such constructions shall be demolished by the owners within a period to be fixed by the authorised Command and communicated to the owner. If the construction is not demolished within this period, on the authorised command's request, it shall be demolished by the administrative authorities.

Law no. 3194 (construction Law)

In accordance with Article 21, it is obligatory to obtain from the governor's office or the municipal administration a construction permit for all constructions falling within the scope of this law. The constructions to be carried out by or for the use of the State institutions and organisations are excluded from this obligation.

In accordance with Article 32, should the governor's office or the municipal administration become aware that a construction has been started without first obtaining a construction permit, they would establish the then present state of the building and immediately stop the construction. The owner of the construction, within one month from the date of interruption, must obtain a construction permit. Otherwise, the construction would be demolished on orders by municipality or the governor's office.

COMPLAINTS

1. The applicant complains under Article 1 of Protocol No. 1 that the demolition of his house constituted an unjustified deprivation of his possessions. In this regard he asserts that, as the Municipality decision dated 23 May 1988 and the demolition order dated 8 June 1988 were not communicated to him, his right to challenge the legality of the demolition was prejudiced.

2. The applicant also complains under Article 8 of the Convention that the destruction of his house constituted an unjustified interference with his right to respect for his home.

3. The applicant further complains under Article 18 of the Convention that the measures complained of were inconsistent with the legitimate aims prescribed in Article 8 and Article 1 of Protocol No. 1.

4. The applicant also complains under Article 6 para. 1 of the Convention that he did not have a fair trial in the proceedings before the administrative courts. He asserts in this regard that contrary to the comments in the Gokceada Court of First Instance's decision dated 6 September 1991, the Bursa Administrative Court and the Council of State found that the administration was not responsible for the demolition of his house.

5. The applicant further complains under Article 6 para. 1 of the unfairness of the Public Prosecutor's decisions dated 16 June 1989 and 21 June 1990 which dismissed his requests to have criminal proceedings instituted against the person allegedly responsible for the demolition of his house.

6. The applicant complains under Article 5 of the Convention that the demolition of his house by the administrative authorities constituted an unjustified interference with his right to security of person.

7. The applicant lastly alleges a violation of Article 3 of the Convention in that, the emotional stress and anxiety which he suffered as a result of the demolition of his house amounted to inhuman treatment.

THE LAW

1. The applicant complains that the demolition of his house constituted 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:

> "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 first notes that the demolition of the applicant's house involved a deprivation of property, but in the circumstances of the case, the deprivation formed a constituent element of the procedure for the control of the construction of buildings in the restricted military zones (cf. Eur. Court H.R., Agosi judgment of 24 October 1986, Series A, no. 108, para. 51, p. 17). Therefore the demolition of the house constituted an interference with the applicant's property rights within the meaning of the second paragraph of Article 1 of Protocol No. 1 (P1-1).

The Commission must therefore examine whether the interference was justified. In this respect, it recalls that the Convention provision at issue requires that the interference with a person's peaceful enjoyment of his possessions is lawful and serves a legitimate aim (see Eur. Court H.R., Fredin judgment of 18 February 1991, Series A no. 192, pp. 16-17, paras. 48-50). Moreover the interference must be proportionate, achieving a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (Fredin judgment, loc. cit., p. 17, para. 51; Agosi judgment of 24 October 1986, Series A. no. 108, p. 18, para. 52).

As regards the lawfulness of the interference, the Commission observes that in the present case the demolition of the building was in accordance with Article 8 paras. g and f of the Law no. 2565.

As regards the aim, the Commission observes that it appears from the relevant provisions of Law no. 2565 that the purposes of demolishing buildings constructed in restricted military zones without the military authorities' prior approval are to secure compliance with the rules governing the restricted areas for military purposes and the protection of secrecy of the information concerning the forces employed

for the State's defence. The Commission therefore finds that the interference at issue was in the interest of the national defence and therefore pursued a legitimate aim.

As regards the proportionality of the measure in question, the Commission recalls that in matters of national defence, States enjoy a wide margin of appreciation (cf. Papamichalopoulos and others v. Greece, Comm. Report of 9 April 1992, para. 52, Eur. Court H.R. Series A no. 260-B, p. 77) with regard to both choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (cf. Fredin judgment loc. cit., para. 51, p. 17).

The Commission further recalls that in determining whether a fair balance has been struck, among other factors, regard must be had to the behaviour of the owner of the property, including the degree of fault or care which he has displayed (Agosi judgment, loc. cit., para. 54, p. 19).

In the present case, the applicant, before constructing the house, failed to obtain the necessary permissions from the military and the civil authorities as required by the law. Therefore the demolition of the applicant's house resulted from his failure to obtain the necessary permissions which constituted a significant fault attributable to the applicant.

The applicant also argues that on account of lack of communication of the Municipality decision dated 23 May 1988 and the demolition order 8 June 1988, his right to challenge the legality of the demolition was prejudiced. However, the Commission observes that contrary to his allegations, the applicant acknowledged before the Bursa Administrative Court that the Municipality decision had been communicated to him on 28 May 1988. Moreover, he did challenge the the demolition order first before the military authorities and later before the administrative courts. The Commission therefore finds that the applicant was not deprived of a reasonable opportunity of putting his case to the responsible authorities (cf. mutatis mutandis, Agosi judgment, loc. cit., para. 55, p. 19).

In light of the above, the Commission finds that neither the civil nor the military authorities can be said to have overstepped the limits of the margin of appreciation. Nor does it find any other indication of disproportionality.

It follows that the interference with the applicant's property rights was justified and therefore, this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2).

2. The applicant also alleges that the demolition of his house amounted to an interference with his right to respect for his home as guaranteed by Article 8 (Art. 8) of the Convention, which, reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission considers that even assuming that the demolition of the applicant's house constituted an interference with his right to

respect for his home within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention, the interference was in any event justified for the following reasons.

The Commission recalls that according to the constant case-law of the Convention organs, an interference under the first paragraph of Article 8 (Art. 8) entails a violation unless it is "in accordance with the law", has an aim that is legitimate under Article 8 para. 2 (Art. 8-2) and is "necessary in a democratic society" for the aforesaid aim (see e.g., Eur. Court H.R., W v. the United Kingdom, judgment of 8 July 1987, Series A no. 121, p. 27, para. 60 (a).

The Commission referring to its examination above under Article 1 of Protocol No. 1 (P1-1), considers that the interference in question was likewise lawful and pursued a legitimate aim, namely, to protect national security and public safety. It remains to ascertain whether the interference was necessary in a democratic society.

The Commission recalls that the notion of "necessity" implies that the interference corresponds to a pressing social need and that it is proportionate to the aim or aims pursued (see e.g. Eur. Court H.R. Olsson judgment of 24 March 1988, Series A no. 130, p. 32, para. 68).

The Commission, referring further to its above considerations under Article 1 of Protocol No. 1 (P1-1), finds that the interference with the applicant's right to respect for his home was necessary and proportionate to the aim pursued.

It follows that even assuming that there has been an interference with the applicant's right to respect for his home, it was justified under the second paragraph of Article 8 (Art. 8) and therefore, this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2).

3. The applicant further complains under Article 18 (Art. 18) of the Convention that the restrictions which were applied to his right to respect for his home and the peaceful enjoyment of his possessions, as guaranteed by Article 8 para. 1 (Art. 8-1) of the Convention and Article 1 of Protocol 1 (P1-1), were inconsistent with the legitimate aims prescribed in Article 8 para. 2 (Art. 8-2) and the second paragraph of Article 1 of Protocol No. 1 (P1-1-2). Article 18 (Art. 18) provides:

> "The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

However, as the Commission found above, the restrictions which were applied to the applicant's rights at issue were justified under Article 8 para. 2 (Art. 8-2) of the Convention and the second paragraph of Article 1 of Protocol No. 1 (P1-1) and therefore, they were consistent with the legitimate aims for which they have been prescribed.

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

4. The applicant also complains under Article 6 para. 1 (Art. 6-1) of the Convention that the Bursa Administrative Court and the State Council, when dismissing his request for the annulment of the demolition order, failed to consider the comments of the Gökçeada Court of First Instance as regards the liability of the administration. Article 6 para. 1 (Art. 6-1) in so far as relevant, provides:

> "1. In the determination of his civil rights and obligations ...

everyone is entitled to a fair ... hearing ... by [a] ... tribunal established by law ..."

The Commission recalls in the first place that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with applications alleging that errors of law or fact have been committed by domestic courts except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (see e.g., No. 17722/91 Dec. 8.4.91, D.R. 69 pp. 345, 349).

The Commission further recalls that it is primarily for the national courts to assess the evidence before them. The Convention organs cannot examine the national courts' assessment of evidence unless there has been a gross unfairness or arbitrariness (cf. No. 7987/77, Dec. 13.12.79, D.R. 18 p. 31).

In the present case, the applicant complains of the administrative courts' failure to consider the Gökçeada Court of First Instance's comments on the administration's liability. However, it appears that the purpose of the civil proceedings before the Gökçeada Court of First Instance was to ascertain whether and to what extent the Mayor and the Regimental Commander were personally responsible for the applicant's losses and not to determine the liability of the administration. It was for the administrative courts to decide on this matter. The Commission observes that the Bursa Administrative Court and the State Council examined the particular circumstances of the case, evaluated the evidence which they had before them and for reasons expressly stated in their decisions dated 26 April 1991 and 24 December 1992 respectively, found no violation of law as regards the demolition of the applicant's house.

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

5. In so far as the applicant complains, under Article 6 para. 1 (Art. 6-1) of the Convention, of the unfairness of the Public Prosecutor's dismissal of his complaint to bring criminal proceedings against the persons responsible for the demolition of his house, the Commission recalls that no right to institute criminal proceedings against the third party is, as such, guaranteed by the Convention (see e.g., Azevedo v. Portugal Comm. Report 10.7.89 para. 88, Eur. Court H.R., Series A no. 189, p. 23).

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

6. The applicant lastly alleges violations of Articles 3 and 5 (Art. 3, 5) of the Convention.

However, to the extent that they have been substantiated, the applicant's complaints, as they have been submitted, do not disclose any violation of the invoked Convention provisions.

It follows that this part of the application is also manifestly ill-founded and must be rejected pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

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)