AS TO THE ADMISSIBILITY OF

Application No. 25128/94
by Kamil Naim KUMASÇI
against Turkey

The European Commission of Human Rights (Second Chamber) sitting in private on 2 July 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
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 7 december 1993 by Kamil Naim Kumasçi against Turkey and registered on 13 September 1994 under file No. 25128/94;

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, born in 1932, is a Turkish citizen and resident in Istanbul.

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

The applicant was one of four co-owners of a plot in Istanbul. On 26 May 1985 the applicant and the other co-owners concluded a contract with an entrepreneur, according to which the latter undertook to construct a building comprising shops and offices. The entrepreneur would divide the shops and offices into two sections on completion of the construction one of which the co-owners of the land could choose for themselves while the other group would fall to the entrepreneur.

The entrepreneur, after having completed the building, divided it into two groups of shops and offices and notified the co-owners. Three of them chose one of the two groups, but the applicant objected both to the choice of the other three and to a proposal for division made by the entrepreneur since the two sections were not equal.

On 9 July 1991 the applicant filed an action with the Civil

Justice of the Peace in Istanbul requesting the equal division of the 54 shops and offices between the co-owners and the entrepreneur.

The Civil Justice of the Peace appointed three experts who submitted a report proposing two new groups of shops and offices to the Civil Justice of the Peace.

On 25 June 1992 the Civil Justice of the Peace held that the shops and offices built by the entrepreneur should be given to the parties and be registered at the land registry in accordance with the report prepared by the experts. The Civil Justice of the Peace considered that the applicant's requests implied termination of the co-ownership. In this regard he held that the co-ownership should be terminated in proportion to the shares of the co-owners.

On 2 October 1992 the applicant lodged an appeal with the Court of Cassation against the decision of the Civil Justice of the Peace on the ground that there had been a mistake, stating that he had wanted only the equal division of the shops and offices between the entrepreneur and the co-owners, but not the termination of the co-ownership.

On 9 March 1993 the Court of Cassation considered that the applicant's requests indeed implied a termination of the co-ownership and upheld the decision of the Civil Justice of the Peace; it therefore dismissed the applicant's appeal.

On 26 April 1993 the applicant applied to the Court of Cassation requesting rectification of the decision.

On 10 June 1993 the Court of Cassation rejected the applicant's request for rectification of the decision on the ground that the legal conditions for such rectification were not met.

COMPLAINTS

The applicant complains that the domestic courts were not impartial since they failed to consider his objections during the proceedings.

He maintains that the courts gave a decision to terminate the co-ownership, although he had not requested it. Furthermore, he alleges that he suffered damage of 2,500,000,000 Turkish Liras. Accordingly, the applicant submits that his right to property was violated due to the national courts' mistakes and wrong assessments.

The applicant invokes Article 6 para. 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

THE LAW

The applicant complains under Article 6 (Art. 6) of the Convention that he did not have a fair trial since the courts were not impartial. He alleges that he suffered damage due to the wrong assessments and mistakes of the domestic courts.

However, the Commission recalls that under Article 19 (Art. 19) of the Convention its sole task is to ensure observance of the engagements undertaken by the High Contracting Parties in the Convention. It is not competent to examine applications concerning errors of law or fact allegedly committed by the competent national authorities, to whom it falls in the first place to interpret and apply domestic law and to assess the evidence before them (No. 25062/94, Dec. 18.10.95, D.R. 83, p. 77).

In the present case, the Commission observes that the national courts based their judgments on the report of the experts for just

division of the shops and offices and they construed the applicant's request for equal division as termination of their co-ownership in accordance with relevant provisions of the Turkish Civil Code.

The Commission therefore notes that the applicant's complaints concern the national courts' evaluation of the nature of the applicant's claims and of his fair share of the property. The Commission finds no element which would allow it to conclude that the courts established the facts in an arbitrary or unreasonable manner or that they misinterpreted the applicable provisions of the civil law. The Commission concludes therefore that in this respect there was no violation of Article 6 (Art. 6) of the Convention.

Insofar as the applicant invokes Article 1 of Protocol No. 1 (P1-1) to the Convention, the Commission primarily recalls that legal provisions governing private law relations between individuals and which provide for the surrender of a possession from one person to another, in particular concerning the termination of co-ownership, do not infringe the right to peaceful enjoyment of possessions (No. 12462/86, Dec. 13.7.1987, D.R. 53, p. 234). Secondly, there is no appearence that the applicant has been deprived of his property in favour of others since there was no unfair trial as mentioned above. The Commission concludes therefore that, in the instant case, there was no violation of Article 1 of Protocol No. 1 (P1-1) to the Convention.

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

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber