AS TO THE ADMISSIBILITY OF

Application No. 24834/94
by Zekeriya KURTÇA
against Turkey

The European Commission of Human Rights (First Chamber) sitting in private on 15 May 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. 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 15 June 1994 by Zekeriya Kurtça against Turkey and registered on 5 August 1994 under file No. 24834/94;

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 is a Turkish citizen, born in 1960 and resident in Samsun. He is a chartered accountant (serbest muhasebeci).

A. Particular circumstances of the case

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

On 5 July 1989 X., a former client of the applicant, informed the tax authorities that the applicant, by using false invoices, had been providing unlawful tax refunds for his clients. He stated that the invoices, which bore his title, had been illegally produced after he had ceased his business.

The controllers linked to the Samsun tax office carried out an investigation into the matter.

The applicant stated to the controllers that he had been recently informed that the invoices in question had been used by his firm in receiving tax refunds on behalf of his clients. According to the applicant, Y., one of his employees, had 20 series of invoices printed

and later used 15 of them as certificates to receive tax refunds. Y had destroyed copies of the invoices used and of the remaining 5 series which he had not used.

In his statement to the controllers, Y. admitted that he had taken delivery of the invoices in question from a printing house. He had a false stamp produced in order to be able to take delivery.

Some of the applicant's clients stated that they had given powers of attorney to the applicant to collect a tax refund on their behalf.

On 22 November 1989, the controllers issued their report. They noted that the invoices in question had been used during a period of sixteen months. Having regard further to the applicant's statement, they commented that it was not possible to accept that Y. had carried out these activities without the applicant's knowledge. They concluded that the applicant should pay the highest amount of tax refund which could have been received by using all the false invoices (14.500.000 lira) and that a penalty corresponding to three times the unlawfully received tax refund (43.500.000 lira) should be imposed on him.

Criminal proceedings were instituted against the applicant and Y. for falsification of documents.

In a decision dated 3 May 1990 the Samsun Criminal Court (Asliye Ceza Mahkemesi) acquitted the applicant for lack of evidence.

On 18 June 1991 Samsun Criminal Court convicted Y. for falsification of documents.

On 28 February 1991 the Gaziler Tax Office sent a payment order to the applicant requesting him to pay 66.120.000 lira as unlawfully received tax refunds and penalties.

On 5 June 1991 the applicant applied to the Samsun Tax Court and instituted proceedings for the annulment of the payment order. He first contested the procedure followed by the Tax Office while imposing the unlawfully received tax refunds and fiscal penalties. Next, he challenged the controllers' report. He asserted that the controllers had found only a few false invoices recorded in the account books of some of his clients. According to the applicant, the report was not based on a proper investigation. The controllers had not obtained a proper statement from Y. They were therefore prejudiced against him. He denied that he had any role in supplying false invoices and causing unlawful tax refund relying also on his acquittal of the charges for falsification of documents.

On 3 December 1991, the Court dismissed the applicant's request. The Court first observed that the procedure followed by the Tax Office was lawful. As to the substance of the applicant's claim, it referred to Article 6 of the Law No. 2978 (Law on the Tax Refund - Vergi Iadesi Hakkinda Kanun). It held that the applicant's arguments that the invoices had been printed and used without his knowledge could not be accepted since an employer had to assume full responsibility in relation to his business. In addition, the applicant himself had stated that 20 series containing 1.000 copies of invoices had been printed, out of which 15 series containing 750 copies had been used. The Court held that the assessment of the tax refunds and the imposition of penalties based on a maximum amount of tax refunds per invoice were lawful. Nevertheless, the Court held that the number of invoices to be taken into consideration in this respect should be limited to 750 used copies and accordingly reduced the unlawfully received tax refunds to 10.875.000 lira and the penalties to 32.625.000 lira.

The applicant appealed.

On 20 October 1992 the Council of State, upholding the cogency

of the Samsun Tax Court's assessment of evidence and reasoning, dismissed the appeal.

The applicant requested the rectification of this decision. On 22 December 1993 the Council of State dismissed this request.

B. Relevant domestic law

In accordance with Article 6 of the law no. 2978 (Law on the Tax Refund - Vergi Iadesi Hakkinda Kanun), should the persons who are entitled to receive tax refunds cause unlawful tax refunds by using deliberately false or misleading documents or by falsifying the documents, the amount refunded shall be collected from such persons and in addition a penalty corresponding to three times the tax refund shall be imposed on them.

COMPLAINTS

The applicant complains of the unfairness of the national courts' decisions. He argues that in the proceedings for the annulment of the payment order concerning the imposition of unlawfully received tax refunds and penalties, the national courts wrongly applied the domestic law and dismissed his claim despite the absence of concrete evidence against him.

THE LAW

The applicant, without invoking any specific Article of the Convention, complains of the unfairness of the proceedings relating to unlawfully received tax refund and fiscal penalties imposed on him. He contests the national courts' assessment of evidence and application of the domestic law.

The Commission has examined the applicant's complaint under Article 6 para. 1 (Art. 6) of the Convention which, in so far as relevant, reads:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... "

The Commission first recalls that Article 6 (Art. 6) is not applicable, in principle, under the head "civil rights and obligations" to proceedings in tax cases, even if the fiscal measures complained of have affected pecuniary rights (see e.g., No. 9908/82, Dec. 4.5.83, D.R. 32 p. 266). Therefore to the extent that the applicant's complaint concerns the obligation to reimburse unlawfully received tax refunds, it is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

In so far as the applicant's complaint relates to the imposition of fiscal penalties, the Commission recalls that in certain circumstances, Article 6 is applicable to proceedings concerning fiscal penalties under the head "criminal charge" (Eur. Court H.R., Bendenoun judgment, Series A, No. 284, pp. 25 - 27, paras. 48 - 57).

However, even assuming that Article 6 (Art. 6) is applicable in the present case, the Commission finds that the application is manifestly ill-founded for the following reasons.

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 an unfairness or arbitrariness (cf. No. 7987/77, Dec. 13.12.79, D.R. 18 p. 31).

The Commission observes that in the present case the Samsun Tax Court examined the particular circumstances of the case, evaluated the evidence before it and, for reasons expressly stated in its decision of 3 December 1991, found no violation of the law as regards the imposition of fiscal penalties on the applicant on the ground that his business had been responsible for unlawfully claiming tax refunds in a large number of cases. The applicant's appeal against this decision was dismissed by the Council of State which upheld the Samsun Tax Court's reasoning and assessment of evidence. The Commission does not find any indication that there has been an unfairness or arbitrariness in the proceedings before the national courts.

It follows that the application is 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)