AS TO THE ADMISSIBILITY OF

Application No. 29861/96
by Hatice ÖNSİPAHİOĞLU
against Turkey

The European Commission of Human Rights sitting in private on 9 September 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. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
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 15 September 1995 by Hatice ÖNSİPAHİOĞLU against Turkey and registered on 22 January 1996 under file No. 29861/96;

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, who was born in 1956, is a Turkish citizen. She is a painter, resident in İstanbul.

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

The applicant is one of the heirs of her grandmother, H.K., who died on 3 September 1986.

On 7 February 1964 the applicant's grandmother gave her land, registered in the village of Sarкhamzalк in Adana, to her two sons on condition that after her death they would return this land to her estate.

On 29 November 1966, H.K.'s sons sold the aforementioned land to an industrial company.

After the death of her grandmother, the applicant started civil proceedings on 27 December 1990 in the Adana Civil Court of General Jurisdiction for restitution of her share of the land.

The applicant lodged an application with the national courts to have the judge of the Adana Civil Court of General Jurisdiction withdrawn from the case. On 17 July 1991 the Court of Cassation rejected this application. The applicant applied to the European Commission of Human Rights (Application No. 20794/92) but on 6 May 1993 her application was declared inadmissible.

In its judgment of 21 May 1992 the Adana Civil Court of General Jurisdiction concluded that the industrial company had bought the land bona fide from H.K.'s sons in 1966 and was legally the owner of the land.

On 15 December 1994 the applicant's appeal to the Court of Cassation was rejected.

On 6 April 1995 the Court of Cassation dismissed the applicant's request for rectification of the decision of 15 December 1994. This decision was served on the applicant on 22 May 1995.

COMPLAINTS

1. The applicant complains under Article 6 of the Convention that her right to a fair trial was breached as regards the national courts' evaluation of facts and their interpretation of domestic law. The applicant also submits that her case was not heard by an independent and impartial tribunal.

2. The applicant also alleges under Article 1 of Protocol 1 to the Convention that her right to the peaceful enjoyment of her possessions was breached due to the decisions of the national courts.

3. The applicant further complains under Article 3 of the Convention that the decisions of the national courts constituted inhuman and degrading treatment of her.

THE LAW

1. The applicant complains under Article 6 of the Convention that her right to a fair trial by an independent and impartial tribunal was breached as regards the national courts' evaluation of facts and their interpretation of domestic law.

The Commission notes that the applicant's complaint as regards the national courts' independence and impartiality was previously submitted to the Commission and was declared inadmissible as it was introduced out of time (No. 20794/92). Therefore, the Commission is prevented from examining this part of the complaint as it essentially concerns the same issue.

The Commission further recalls that, in accordance with Article 19 of the Convention, its sole task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application 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. The Commission refers, on this point, to its established case-law (No. 25062/94, Dec. 18.10.1995, D.R. 83-A, p. 77).

The evaluation of evidence and the interpretation of law, about which the applicant complains, are necessarily matters for the domestic courts provided that these have not been found to lack independence and impartiality and cannot be reopened by the Commission unless there is an indication that the judge has drawn grossly unfair or arbitrary conclusions from the facts before him. This does not seem to be the case here. On the basis of the evidence before it, the first-instance court came to the conclusion that on 29 November 1966 the aforementioned land was legally sold to an industrial company. Therefore, it refused the applicant's claim for restitution. The Commission considers that the reasons on which the court based its judgment are sufficient to exclude the possibility that the evaluation of the evidence and the interpretation of domestic law were arbitrary.

The Commission concludes that the applicant's allegation of a violation of the principles of a fair trial in the evaluation of evidence in this case is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The applicant alleges under Article 1 of Protocol No. 1 to the Convention that her right to the peaceful enjoyment of her possessions was breached due to the decisions of the national courts.

The Commission recalls that Article 1 of Protocol No. 1 to the Convention aims at securing the peaceful enjoyment of existing possessions. It is settled case-law that Article 1 of Protocol No. 1 to the Convention does not guarantee any right to acquire property (No. 11628/85, Dec. 9.5.1986, D.R. 47, p. 270).

The Commission observes that, in the present case, the applicant, as one of the heirs of her grandmother, started civil proceedings for restitution of a parcel of land which she claimed to have inherited. The national courts found that the applicant's grandmother had given this land to her sons who had sold it to an industrial company. The national courts concluded that the industrial company legally owned the aforementioned land.

Taking all of these factors together, the Commission finds that the applicant's grandmother did not own the land when she died and consequently, the applicant never acquired possession of this land.

The Commission therefore considers that the present application concerns only the right to acquire property, which is not covered by Article 1 of Protocol No. 1 to the Convention and there is nothing in the file to suggest that the applicant's right to peaceful enjoyment of her possessions has been in any way affected by the national court's decision.

It follows that the applicant's complaint falls outside the scope of Article 1 of Protocol No. 1 to the Convention and is therefore incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2.

3. The applicant also complains under Article 3 of the Convention that the decisions of the national courts constituted inhuman and degrading treatment of her.

The Commission notes that the situation of which the applicant complains is not such as to raise a problem from the point of view of Article 3 of the Convention.

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

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

J.-C. GEUS
President
of the Second Chamber