AS TO THE ADMISSIBILITY OF

Application No. 29568/95
by Ömer Şahin SAYIN
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

Mrs M.-T. SCHOEPFER, Secretary to the Second 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 30 November 1995 by Ömer Şahin Saykn against Turkey and registered on 19 December 1995 under file No. 29568/95;

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 1948, is a Turkish citizen resident in Ankara. He is represented before the Commission by Ms Ferhunde Yavuz, a lawyer practising in Ankara.

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

The applicant inherited a one-third share in an unlimited company and some real estate when his father died in 1975.

On 5 August 1983 the applicant instructed M.S. as his lawyer to sell his share in the company and his real estate in İstanbul and Nizip (Gaziantep) on his behalf.

On 31 August 1983 the applicant withdrew his instructions to M.S. since he was not satisfied with his work.

On the same day M.S. signed a contract on the applicant's behalf with the other shareholders of the company. According to this contract he undertook to transfer the applicant's share in the company and to sell his one-third share of a piece of real estate in Nizip to the other shareholders of the company.

On 14 November 1983 the applicant applied to the Nizip Civil Court of General Jurisdiction for the annulment of the contract signed by M.S. on 31 August 1983.

On 13 September 1988 the Nizip Civil Court of General Jurisdiction found against the applicant. It stated that there was no evidence to show that the contract was not valid. On 17 May 1990 the Court of Cassation rejected the applicant's appeal against this decision.

Almost a year later, the applicant brought another action in the Nizip Civil Court of General Jurisdiction for restitution of his property which had been sold to the other shareholders of the unlimited company pursuant to the contract signed on 31 August 1983.

On 21 June 1994 the court rejected the applicant's claim, referring to its judgment of 13 September 1988. It also noted that the applicant had not submitted any new evidence in support of his case.

The applicant appealed. On 31 January 1995 the Court of Cassation upheld the judgment of the Nizip Civil Court of General Jurisdiction. The Court of Cassation, apparently by mistake, drafted two decisions on this issue, both containing the same conclusion.

On 18 May 1995 the Court of Cassation dismissed the applicant's request for rectification. In its decision, it referred to the decision of 31 January 1995 as a quashing decision, although it had in fact upheld the judgment of the first-instance court.

COMPLAINTS

1. The applicant complains under Article 6 of the Convention that his right to a fair trial was breached as regards the national courts' evaluation of facts and interpretation of

law. He points out that on 31 January 1995 the Court of Cassation delivered two different decisions on the same issue. He also alleges that the reasoning of the decision rejecting his rectification request was drafted in an arbitrary manner.

2. The applicant further complains that the proceedings before the national courts amounted to a violation of his right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention.

THE LAW

1. The applicant complains under Article 6 of the Convention that his right to a fair trial was breached as regards the national courts' evaluation of facts and interpretation of law. He points out that on 31 January 1995 the Court of Cassation delivered two different decisions on the same issue. He also submits that the reasoning of the decision which rejected his rectification request was drafted in an arbitrary manner.

As regards the applicant's complaints concerning the proceedings for the annulment of the contract signed on 31 August 1983, the Commission notes that it is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 6, as Article 26 of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken".

The Commission finds that the final decision on this issue was taken on 17 May 1990, whereas the application was introduced with the Commission on 30 November 1995, i.e. more than six months after the final decision was taken.

It follows that the applicant's complaint concerning the proceedings for the annulment of the contract has been introduced out of time and must be rejected under Article 27 para. 3 of the Convention.

As regards the applicant's complaint concerning the proceedings for the restitution of his property, the Commission recalls that under Article 19 of the Convention, its sole task is to ensure the 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, 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 (see, e.g., No. 25062/94, Dec. 18.10.1995, D.R. 83, p. 77; No. 21283/93, Dec. 5.4.94, D.R. 77-A, p. 81).

It is true that in the instant case the Court of Cassation, apparently by mistake, delivered two decisions dated 31 January 1995. However, noting that both decisions contain the same conclusion, the Commission cannot find that this element makes the proceedings as such unfair. Moreover, as regards the Court of Cassation's decision of 18 May 1995, the Commission observes that the court wrongly referred in that decision to

the decision of 31 January 1995 as a decision by which the appealed decision had been quashed, while in reality the Court of Cassation had upheld the decision of the lower court. However, this apparent error is not sufficient for the Commission to regard the proceedings as being unfair.

As to the applicant's complaint concerning the evaluation of evidence and interpretation of the law, the Commission notes that this is a matter which necessarily comes within the appreciation of independent and impartial courts and cannot be renewed 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.

In these circumstances, the Commission finds no sufficient grounds to conclude that the proceedings in the present case were unfair and contrary to the requirements of Article 6 para. 1 of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The applicant further complains that the proceedings before the national courts amounted to a violation of his right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention.

The Commission recalls that deprivation of property as referred to in Article 1 of Protocol No. 1 to the Convention primarily concerns expropriation of assets for public purposes, and not the determination of rights in disputes between private persons (No. 13021/87, Dec. 8.9.1988, D.R. 57, p. 268).

In the present case the applicant's loss of his property was the result of a transaction between private persons under private law and of court decisions relating to the validity of that transaction.

Having regard to the above, the Commission finds that the proceedings in question do not amount to an interference with the applicant's property rights as guaranteed by Article 1 of Protocol No. 1 to the Convention.

It follows that this part of the application should be dismissed 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	J.-C. GEUS
Secretary	President
to the Second Chamber	of the Second Chamber