AS TO THE ADMISSIBILITY OF

Application No. 29916/96
by Vehbi ÜNAL
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. BIELIâNAS
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 6 March 1995 by Vehbi Ünal against Turkey and registered on 23 January 1996 under file No. 29916/96;

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 1931, is a Turkish citizen. He is a building contractor, resident in Istanbul.

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

In November 1980 the applicant signed a contract with the Istanbul Lawyers' and Administrators' Construction Co-operative to build a housing estate in Kad9köy, Istanbul.

In May 1983 the Co-operative revoked the contract.

The applicant started civil proceedings against the Co-operative before the Istanbul Civil Court of General Jurisdiction.

On 22 February 1988 the court rejected the applicant's claim.

The applicant appealed and on 16 May 1989 the Court of Cassation found in favour of the applicant, quashing the judgment of 22 February 1988.

On 11 September 1991 the Istanbul Civil Court of General Jurisdiction applied the decision of the Court of Cassation. Both the applicant and the defendant appealed against the judgment. On 7 May 1992 the Court of Cassation quashed the judgment of 11 September 1991 on the ground that the first-instance court had miscalculated the level of interest to be applied to the damages as a result of the debtor's default.

In a judgment of 3 March 1993 the Istanbul Civil Court of General Jurisdiction recalculated the level of interest.

On 28 December 1993 the applicant's appeal to the Court of Cassation was dismissed. This decision was served on the applicant on 4 February 1994.

The applicant also requested to the President's Council of the Court of Cassation (BaÕkanlar Kurulu) to invite Joint Civil Chambers of the Court of Cassation to unify its case-law concerning default cases. On 5 May 1994 and 2 February 1995 his requests were rejected as the President's Council of the Court of Cassation did not find any similarity between his case and other Court of Cassation decisions referred to by the applicant.

COMPLAINTS

The applicant complains under Article 6 of the Convention that his right to a fair trial was violated. He alleges that as his defendant was a co-operative of lawyers, the judges could not act impartially in the proceedings.

THE LAW

The applicant complains under Article 6 of the Convention that his right to a fair trial was violated.

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 observes that the final decision was delivered on 28 December 1993 and was served on the applicant on 4 February 1994.

The Commission notes that the applicant's request to the president's office of the Court of Cassation to invite the Joint Civil Chambers of the Court of Cassation to decide to unify its case-law, is not a directly accessible remedy under Turkish law. Accordingly, the running of the six-month period is not interrupted by these proceedings (see, mutatis mutandis, No. 19601/92, Dec. 19.01.1995, D.R. 80, p. 46).

It follows that the application was introduced out of time and must be rejected under Article 27 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