AS TO THE ADMISSIBILITY OF

Application No. 31832/96
by Emil ÜNEN
against Turkey

The European Commission of Human Rights (Second Chamber) sitting in private on 14 January 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 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 25 May 1996 by Emil Ünen against Turkey and registered on 12 June 1996 under file No. 31832/96;

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, a Turkish citizen, born in 1928, resides in izmir.

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

At the relevant time the applicant was a lawyer representing the State Treasury. He wanted to be a prosecutor, so applied to the Supreme Prosecutors Council to be appointed as a prosecutor.

In February 1968 the Council approved the applicant's qualifications for the post and admitted him as a prosecutor. The applicant then waited to be appointed to a post. In the meantime, he continued to work as a lawyer.

On 30 January 1986 the Supreme Judges and Prosecutors Council ruled that lawyers who wanted to be appointed as judges or prosecutors should be under 35 years of age.

On 24 February 1992 the Council refused to appoint the applicant as a prosecutor. It concluded that the applicant was more than 35 years old when he had applied to the Council.

The applicant requested a re-examination of his case, but the Council rejected his request.

On 24 June 1992 the applicant applied to the Administrative Court in Ankara for the annulment of the Supreme Judges and Prosecutors Council's decision refusing to appoint him as a prosecutor. On 9 July 1992 the Administratative Court in Ankara dismissed the applicant's case. It held that the Law on Supreme Judges and Prosecutors Council stipulated, inter alia, that the Council's decisions were only subject to re-examination and would become final after that examination. The court, accordingly, ruled that there were no legal grounds to examine the final decision of the Supreme Judges and Prosecutors Council.

The applicant appealed against this judgment. On 7 November 1995 the Council of State dismissed his appeal and upheld the decision of the Administrative Court.

In the meantime the applicant also applied to the Council of State for the annulment of the decree issued by the Supreme Judges and Prosecutors Council in which it was stipulated that lawyers who wanted to be appointed as judges or prosecutors should be under 35 years of age. On 22 April 1992 the Council of State dismissed the applicant's case. It held that the Law on Supreme Judges and Prosecutors Council stipulated, inter alia, that the Council's decisions were only subject to re-examination by the Judicial Service Council and would become final after that examination. The court, accordingly, ruled that there were no legal grounds to examine the case.

COMPLAINTS

The applicant complains principally of the dismissal, by the Supreme Council of Judges and Prosecutors, of his application to be appointed as a prosecutor. He explains that since the Council had previously approved his qualifications for the post and admitted him as a prosecutor, it was unlawful to refuse to appoint him afterwards.

Invoking Article 6 of the Convention, he complains that he did not have an effective remedy whereby to challenge the decisions of the Supreme Judges and Prosecutors Council.

He further alleges that as he was not appointed as a prosecutor he did not benefit from the pecuniary rights which are granted to prosecutors.

THE LAW

1. The applicant complains principally of the dismissal, by the Supreme Judges and Prosecutors Council, of his application to be appointed as a prosecutor. He explains that since the Council had previously approved his qualifications for the post and admitted him as a prosecutor, it was unlawful to refuse to appoint him afterwards.

Invoking Article 6 (Art. 6) of the Convention, he complains that he did not have an effective remedy whereby to challenge the decisions of the Supreme Judges and Prosecutors Council.

The Commission recalls, firstly, that the right to be appointed in the public service, including the national judicial service, is not guaranteed by the Convention (cf. No. 23991/94, Dec. 17.1.94, D.R. 84-B p. 69).

The Commission recalls further that disputes relating to the recruitment, careers and termination of service of civil servants are as a general rule outside the scope of Article 6 para. 1 (Art. 6-1) of the Convention. In the instant case, the applicant was seeking judicial review of the decision refusing to appoint him to the public prosecutor

post. The dispute raised by him thus clearly related to his recruitment in the public service. It did not, therefore, concern a "civil" right within the meaning of Article 6 para. 1 (Art. 6-1) of the convention. Accordingly, Article 6 para. 1 (Art. 6-1) is not applicable in the case (see mutatis mutandis, Eur. Court HR, Laghi v. Italy judgment of 2 September 1997, Reports 1997-V, no. 46, paras. 17-18 ; Orlandini v. Italy judgment of 2 September 1997, Reports 1997-V, no. 46,
paras. 18-19).

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention set out in Article 27 para. 2 (Art. 27-2).

2. The applicant further alleges that as he was not appointed as a prosecutor he did not benefit from the pecuniary rights which are granted to prosecutors. He does not invoke any particular Article of the Convention.

The Commission considers that it is appropriate to examine the complaint under Article 1 of Protocol No. 1 (P1-1).

The Commission recalls the jurisprudence of the European Court of Human Rights according to which Article 1 of Protocol No. 1 (P1-1) "does no more than enshrine the right of everyone to the peaceful enjoyment of 'his' possessions,...consequently it applies only to a person's existing possessions..."(Eur. Court HR, Marckx v. Belgium judgment of 13 June 1979, Series A no. 31, p. 23, para. 50; Van Der Mussele v. Belgium judgment of 23 November 1983, Series A no. 70, p. 23, para. 48; Inze v. Austria judgment of 28 October 1987, Series A no. 126, p. 17, para. 37).

In this case the Commission points out that the very nature of the applicant's request which was to benefit from the pecuniary rights granted to prosecutors, was directly linked to his request to be appointed as a prosecutor, and his request was refused by the authorities. Therefore, the applicant's complaint is based on his potential rights but not on his existing possessions. The Commission is of the opinion that Article 1 of Protocol No. 1 (P1-1) does not apply in the present case.

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention set out in Article 27 para. 2 (Art. 27-2).

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