AS TO THE ADMISSIBILITY OF

Application No. 23765/94
by Mustafa YESILÇINAR, Yasar YESiLÇINAR, Hanife YESiLÇINAR, Ali YESiLÇINAR, Yusuf YESiLÇINAR,
Ayse GÖNEN, Fatma GÖNEN
against Turkey

The European Commission of Human Rights (First Chamber) sitting in private on 17 May 1995, 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
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN

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 28 January 1994 by Mustafa Yesilçinar, Yasar Yesilçinar, Hanife Yesilçinar, Ali Yesilçinar, Yusuf Yesilçinar, Ayse Gönen and Fatma Gönen and registered on 28 March 1994 under file No. 23765/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the present case as submitted by the applicants may be summarised as follows:

A. Particular circumstances of the case

The applicants are all Turkish citizens resident in Beysehir Konya.

In 1979 the Izmir Municipal Administration expropriated a piece of land owned by the applicants in order to construct a multi-storied car park. The administration decided to pay the applicants a compensation of 1.927.500 Turkish Lira. Subsequently, the applicants instituted proceedings for the revision of the compensation amount. In 1986 the compensation was increased by a court decision to 2.750.000

Turkish Lira.

On 26 February 1992 the applicants instituted proceedings against the Izmir Municipal Administration and claimed the recovery of the land or alternatively, the payment of the difference between the current value of the land and the readjusted expropriation compensation. The applicants asserted that the Administration had constructed a business centre on the expropriated land. The applicants did not contest that certain parts of the building were reserved for a car park. They, however, maintained that the Administration had allocated part of the building to shops and offices and transferred a part of their property rights to a bank, thereby contravening the purposes of expropriation. They further stated that since the Administration had not provided them with payment details of the expropriation compensation, they had not been able to receive the compensation.

On 8 February 1993 the Izmir Court of First Instance dismissed the case. The Court concluded that the building constructed by the Administration, contrary to the applicant's allegations, was a multi-storied car park. It stated that the ground floor of the car park was reserved for shops and offices the property rights of which were partly transferred to a bank that had financed the construction of the building. The Court found that neither the existence of shops and offices nor the partial transfer thereof to a bank in accordance with a contractual obligation of the Administration contravened the purposes of the expropriation. As regards the payment of the expropriation compensation, the Court stated that the Administration, in earlier court proceedings introduced by the applicants, had given the details of a bank account to which the compensation had been paid. It held that the applicants' failure to collect the compensation did not give them the right to institute these proceedings.

The applicants appealed. On 10 May 1993 the Court of Cassation, upholding the cogency of the Izmir Court of First Instance's reasoning and the assessment of evidence, dismissed the appeal.

The applicants applied for the rectification of this judgment. On 9 July 1993 the Court of Cassation dismissed this request. The applicants' legal representative received this judgment on 4 August 1993.

B. Relevant domestic law and practice

According to Article 23 of the Expropriation Law (Law No. 6830), if the administration which has expropriated certain immovable property fails to make the appropriate installations in accordance with the purposes of the expropriation within five years from the date of the expropriation, the previous owners may claim the recovery of the property on the condition that they pay back the compensation for expropriation.

In accordance with the case-law of the Turkish Court of Cassation, when the amount of expropriation compensation assessed by the State is contested by the owners, the 5 years' period to claim the recovery of the expropriated property starts to run from the date on which the compensation is readjusted by the Courts.

COMPLAINTS

1. The applicants complain under Article 1 of Protocol No. 1 that expropriation of their land by the Izmir Municipal Administration constituted an unjustified interference with their right to peaceful enjoyment of their possessions. They allege that they have not been paid the expropriation compensation assessed by the Administration and subsequently by the Court.

2. The applicants also complain under Article 1 of Protocol No. 1

that the dismissal of their request for the recovery of the land constituted an unjustified interference with their right to peaceful enjoyment of their possessions.

3. They further complain under Article 14 of the Convention that they were subjected to discrimination in the peaceful enjoyment of their possessions. They allege that the interests of the Administration were protected in a discriminatory manner.

THE LAW

1. The applicants complain under Article 1 of Protocol No. 1 (P1-1) that the expropriation of their land without any compensation constituted an unjustified interference with their right to peaceful enjoyment of their possessions.

Article 1 of Protocol no. 1 (P1-1), in so far as relevant, provides:

> "Every natural ... person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law ..."

However, the Commission is not required to decide whether or not the facts alleged by the applicants disclose any appearance of a violation of this provision, as this part of the application is incompatible with the provisions of the Convention for the following reasons:

The Commission observes that Turkey has recognised the competence of the Commission to receive individual petitions under Article 25 (Art. 25) of the Convention only in relation to facts, including judgments which are based on such facts, which have occurred subsequent to 28 January 1987.

The Commission, however, notes that in the present case, the expropriation took place in 1979. The Commission further notes that the applicants asked for a revision of the expropriation compensation which was readjusted by the court in 1986.

It follows that, in any event, this part of the application is outside the competence ratione temporis of the Commission and therefore incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

2. The applicants further complain under Article 1 of Protocol No. 1 (P1-1) that the dismissal of their request for the recovery of the land constituted an unjustified intereference with their right to peaceful enjoyment of their possessions.

The Commission recalls that the provisions of Article 1 of Protocol 1 (P1-1) applies only to the existing possessions (cf. e.g., Eur Court H.R., Van Der Mussele judgment of 23 November 1983, Series A no. 70, p. 23 para. 48; S.A. Pressos Compania Naviera and Others v. Belgium, Comm. Report 4.7.94, p. 17 para. 59). The Commission further recalls that at the admissibility stage, an applicant who alleges a violation of Article 1 of Protocol No. 1 (P1-1) must produce evidence showing that he is entitled to the "possession" within the meaning of that Article (cf. No. 7742/76, Dec. 4.7.78, D.R. 14 p. 146). In the present case, the applicants must show that they were entitled to the recovery of the land.

The Commission notes that, under Turkish Law, the previous owners of the expropriated property may claim its recovery under certain conditions which, in the absence of mutual agreement between the parties, need to be determined by the courts. In the proceedings before

the Izmir Court of First Instance, the applicants argued that the existence of shops and offices on the ground floor of the building and the partial transfer thereof to a third party contravened the purposes of the expropriation. However, their claim was dismissed. The Izmir Court of First Instance, in its decision of 8 February 1993, held that the Administration had constructed a building which was in conformity with the purposes of the expropriation.

In view of the above, the Commission considers that the applicants have not shown that they were entitled to the recovery of the land.

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

3. The applicants lastly allege under Article 14 (Art. 14) of the Convention that they have been subjected to discrimination in the peaceful enjoyment of their possessions. They allege that the interests of the Administration were protected in a discriminatory manner.

The Commission has examined under Article 14 (Art. 14) of the Convention in conjunction with Article 1 of Protocol No. 1 (P1-1), whether the applicants have been subjected to discrimination in the expropriation of their land and in the proceedings for the recovery of the property.

Article 14 (Art. 14) prohibits discrimination only in the enjoyment of the rights and freedoms guaranteed by the Convention.

However, as the Commission found above, the applicants' complaint concerning the expropriation of their land is incompatible ratione temporis with the provisions of the Convention. Therefore this aspect of the application must be rejected on the same grounds.

As regards the alleged discrimination concerning the recovery of the property, the Commission recalls that discrimination is prohibited by the Convention only when different measures are adopted with regard to persons in comparable situations (cf. Eur. Court H.R., Belgian Linguistic judgment of 23 July 1968, Series A no. 6 pp. 33-34, paras 9-10).

However, in the present case, the applicants have not shown how the dismissal of their request to recover their land constituted a difference of treatment with regard to persons in comparable situations. Moreover, they did not otherwise substantiate this allegation. Therefore this aspect of the application is manifestly ill-founded.

It follows that this part of the application must be rejected in accordance with 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)