CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 50733/99
by Nuri ÖZKAN
against Turkey

The European Court of Human Rights (Second Section), sitting on 28 January 2003 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr GAUKUR JÖRUNDSSON,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE, *judges*,
and Mr T.L. EARLY, *Deputy Section Registrar*,

Having regard to the above application lodged on 14 May 1999,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Nuri Özkan, is a Turkish national who was born in 1950 and lives in the Kuşadası district in the province of Aydın.

The circumstances of the case

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

On 9 June 1989 the Kuşadası District Council (*Kuşadası Belediyesi,* hereinafter "the Council") and the applicant signed an agreement. By virtue of this agreement the Council unconditionally allocated part of the historic castle in Kuşadası to the applicant to open and run a museum for an indefinite period. On 18 July 1989 the applicant was issued with a special title deed to the property enabling him to open the museum.

On 26 May 1990 the museum was opened to the public following the grant of a licence by the Ministry of Culture.

On 22 April 1991 the Council annulled the agreement of 9 June 1989 on the ground that the applicant had not signed a protocol with the Mayor of Kuşadası within 15 days from the date of the opening of the museum. Pursuant to such a protocol the applicant would have undertaken to pay the Council 40% of the money generated from the entrance tickets sold to visitors to the museum. Items displayed in the museum were removed from the museum by the Council's employees.

a) The administrative proceedings

The applicant brought an action before the Aydın Administrative Court requesting the annulment of the Council's decision of 22 April 1991.

On 12 November 1991 the Aydın Administrative Court (*Aydın İdare Mahkemesi*) annulled the decision on the ground that the Council had never informed the applicant about the protocol or warned him about its intention to rescind the agreement. The Council appealed against the decision.

On 2 May 1995 the Supreme Administrative Court (*Danıştay*) quashed the Aydın Administrative Court's decision of 12 November 1991.

On 28 September 1995 the Aydın Administrative Court acceded to the Supreme Administrative Court's decision and rejected the applicant's request to annul the Council's decision. The court noted that a clause in the initial agreement between the Council and the applicant had stipulated that 40% of the income would be handed over to the Council. The court further observed that the applicant had been reminded by the Council about this clause on 24 May 1990 and had been urged to sign the protocol.

On 23 November 1995 the applicant appealed against this decision, arguing that there was no such clause in the initial agreement with the Council. He submitted that this issue had merely been discussed during his meetings with the Council and that these discussions were recorded in the verbatim records. He further pointed out that the initial agreement with the Council had contained no conditions and that the verbatim records of the discussions could not be interpreted so as to impose a contractual obligation on him. He finally stated that the Council had never replied to his written requests enquiring about the percentage of the income which had to be deposited as well as the number of the Council's bank account.

On 27 February 1997 the Supreme Administrative Court rejected the appeal.

On 3 April 1997 the applicant applied to the Supreme Administrative Court and requested the rectification of the latter's decision of 27 February 1997.

On 23 December 1998 the Supreme Administrative Court refused the applicant's request for rectification.

b) The civil proceedings

The applicant, in parallel to the above-mentioned administrative proceedings, also lodged another action with the Aydın Administrative Court on 28 September 1995, challenging the Council's decision to annul the grant of the title deeds to the museum.

On 5 October 1995 the Aydın Administrative Court decided that it lacked jurisdiction to decide the case and held that the action should have been lodged with the civil courts. The applicant appealed against this decision.

On 21 January 1997 the Supreme Administrative Court rejected the appeal.

On 31 March 1997 the applicant brought an action before the Aydın Civil Court of First Instance (*Aydın Asliye Hukuk Mahkemesi*) and requested the court to order the registration of the title deeds to the museum in his name.

On 9 December 1997 the Aydın Civil Court of First Instance rejected the applicant's request.

On 20 January 1998 the applicant appealed.

On 9 April 1999 the 14th Chamber of the Court of Cassation rejected the appeal.

COMPLAINTS

The applicant complains under Article 6 of the Convention that his right to a fair hearing was breached because neither of the two decisions rendered by the domestic courts was in compliance with domestic procedure or with the Turkish Constitution. Under Article 13 of the Convention, the applicant alleges that he had no effective remedy in domestic law in respect of his complaint.

He further complains under Article 6 § 1 of the Convention that the administrative proceedings and the civil proceedings were not concluded within a reasonable time.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention that his right to a fair hearing was breached because the administrative proceedings and the civil proceedings were not conducted in compliance with domestic procedure and the Constitution. The applicant further complains that he had no effective remedy in this connection. He relies on Article 13 of the Convention.

1. Fairness

Article 6 § 1, in so far as relevant, provides as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time ..."

Article 13 provides:

> "Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court notes that the applicant has not explained why he considers that the impugned proceedings were unfair, other than stating that they did not comply with domestic procedure or with the Constitution.

The Court observes in this context that the applicant was represented by counsel throughout the domestic proceedings and that he was given adequate opportunity to present his arguments to the domestic courts. These courts gave reasons for their decisions which the applicant was able subsequently to challenge on appeal. The Court finds that there is no appearance of a breach of the fairness guarantees of Article 6 in the circumstances of the applicant's case.

The Court further notes that the word "remedy" within the meaning of Article 13 does not mean a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see, *mutadis mutandis*, *Bensaid v. the United Kingdom*, no. 44599/98 § 56, ECHR 2001-I; see also *Said v. The Netherlands* (dec.), no. 2345/02, 17.9.2002). To this end, the Court notes that the applicant was able to challenge the decisions of the domestic courts, albeit unsuccessfully, on appeal. He thus had an effective remedy in respect of his unfairness complaint. There is, accordingly, no appearance of a breach of Article 13.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Length of the proceedings

The applicant maintains that the civil and administrative proceedings were not concluded within a reasonable time, in breach of Article 6 § 1.

i- Civil proceedings

The Court notes that the applicant brought his action challenging the annulment of the title deeds to the museum before the Aydın Administrative Court on 28 September 1995. That court decided that it lacked jurisdiction. Jurisdiction to try the case was finally resolved on 21 January 1997 when the Supreme Administrative Court upheld the Aydın Administrative Court's decision. The subsequent civil proceedings brought by the applicant on 31 March 1997 before the Aydın Civil Court of First Instance were concluded on 9 April 1999 with the decision of the Court of Cassation.

The Court observes in this context that during three years and six months the domestic courts examined the case at four instances, two of which were at the appeal level.

Furthermore, the Court observes that the applicant's conduct, which is a relevant factor to be taken into account when assessing the reasonableness of the impugned period, also contributed to the length of the proceedings (see, among many other authorities, the *Mitap and Müftüoğlu v. Turkey* judgment of 25 March 1996 (*Reports of Judgments and Decisions* 1996-II, p. 411, § 32).

In the light of the above, the Court does not find that this period was unreasonably long.

It follows that this part of the application is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

ii- Administrative proceedings

In so far as the applicant complains that the administrative proceedings, which lasted between 1991 and 23 December 1998, were not concluded within a reasonable time within the meaning of Article 6 § 1 of the Convention, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of the administrative proceedings;

Declares the remainder of the application inadmissible.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President