APPLICATION N° 26308/95

INSTITUT DE PRÊTRES FRANÇAIS and others v/TURKEY

DECISION of 19 January 1998 on the admissibility of the application

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Article 9, paragraph 1, of the Convention *A church body or an association with religious or philosophical objects is capable of exercising the rights contained in Article 9*

Article 25 of the Convention

a) A religious institute as a non-governmental organisation can be deemed entitled to introduce an application

b) In order for an applicant to be able to claim to be a victim of a violation he must be directly affected by it

In the instant case, the applicants are priests and parishioners They are directly affected by the annulment of the title to property of a religious Institute which will as a result, no longer be able to provide religious services and ensure the survival of the church They can claim to be victims

Article 26 of the Convention

a) A person who has raised, in substance the complaint he makes before the Commission before the national authorities has exhausted domestic remedies

b) The six-month period runs from the date of the final domestic decision after effective and sufficient domestic remedies have been used - in the present case a Court of Cassation judgment on an application to rectify one of its own judgments

c) In civil proceedings in Turkey an application for rectification of a judgment constitutes an effective domestic remedy

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THE FACTS

The present application was introduced by the *Institut de Pretres Français* (otherwise known as Augustinians of the Assumption), the Turkish branch of the Congregation of the Augustinians of the Assumption a canon-law entity represented by its religious Superior, the Secretary General of the Congregation and a group of priests and parishioners

The applicants were represented before the Commission by Mr Tekin Akillioğlu a lawyer practising in Ankara

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

1 *Particular circumstances of the case*

In 1859 the Ottoman Sultan granted the Archbishop of the Catholic Community a deed of foundation (*firman*) authorising the construction of a church and other places of worship on a plot of land in Kadikoy (Istanbul)

A chapel and a seminary building were constructed on the land On 20 September 1910 the land was registered in the name of the Augustinians of the Assumption as a place of worship seminary and monastery

Under the Franco Turkish Agreement of 18 December 1913 the *Institut* was recognised by the Turkish Government as a French religious establishment

A letter annexed to the Treaty of Lausanne of 24 July 1923 provided that French religious institutions including the *Institut de Pretres Français*, would be recognised and protected It specified that such institutions were to be "treated on a footing of equality with similar Turkish institutions"

On 30 May 1982 in an attempt to raise funds to maintain the places of worship the *Institut* rented out part of the garden and buildings to a private company which used them for various sporting activities

On 7 November 1988 the Turkish Treasury commenced proceedings in Kadikoy Court of First Instance seeking to have the *Institut's* title to the site annulled and the land restored to the Turkish State The Treasury claimed that the *Institut* was not entitled to use the land for profit making activities It argued that since it was renting out part of its land it was no longer pursuing religious objects

In a judgment of 6 June 1989, Kadikoy Court of First Instance dismissed the Treasury s claim, holding, *inter alia*, that "the Augustinians of the Assumption or *Institut de Prêtres Français* is one of the French institutions recognised and protected by the Treaty of Lausanne and the use of these premises for profit-making activities does not give the Treasury the right to have the land restored to it'

The Treasury appealed on a point of law and, on 18 May 1990, the Court of Cassation quashed the judgment of 6 June 1989 and remitted the case to the Court of First Instance The Court of Cassation held that "the authorisation to acquire real property granted by the Ottoman Empire, in a law enacted in 1868, to foreign legal entities for the purposes of constructing religious, scholastic or charitable edifices such as churches, convents, schools, hospitals, dispensaries and presbyteries was given on condition that such property would continue to be used for the purpose for which the permission was originally granted" According to the Court of Cassation, such foreign institutions had to have acquired, before 30 October 1914, legal personality as recognised by the law of the State concerned, and to retain that personality at the material time The court also observed that such institutions were not entitled to pursue profit-making activities and uses In the case of the Institut, the court held that it did not have legal personality and was not recognised by the Turkish State, contrary to section 3 of the Land Register Act of 1934 (*Tapu Kanunu*)

In a judgment of 5 April 1993, Kadikoy Court of First Instance followed the Court of Cassation judgment and found for the Treasury It ruled that the land should be registered in the name of the Treasury, except for a part of it which was to be registered in the name of the Department of Foundations (*Vakıflar Genel Mudurlugu*), which had joined the proceedings on the side of the Treasury

The *Institut* appealed on points of law, claiming, *inter alia* - with the support of an attestation from the Vatican - that the Congregation had been recognised as a legal person by the Vatican since 1875 It also relied on Article 9 of the Convention and Article 1 of Protocol No 1 thereto

Following a hearing on 12 April 1994, the Court of Cassation upheld the judgment under appeal

The *Institut* lodged an application for rectification of the judgment

On 19 September 1994, the Court of Cassation dismissed this application, holding that the grounds for rectification adduced by the *Institut* were not sufficient

2 *Relevant domestic law*

a Section 3 of the Land Register Act

"Real property which has come into the possession, pursuant to royal decree (*firman*) or governmental decree, of foreign religious scientific and charitable

institutions recognised by the Government of the Republic of Turkey, may be registered in the name of those institutions in their capacity as legal persons provided that they do not exceed the terms of the grant laid down in such decrees and subject to governmental permission"

b *A letter annexed to the Treaty of Lausanne of 24 July 1923 from the head of the* Turkish Delegation to the French Delegate, states

" The Government will recognise the existence of French religious, scholastic and medical establishments, as well as of charitable institutions recognised as existing in Turkey before 30 October 1914

It will favourably examine the case of other similar French institutions actually existing in Turkey at the date of the Treaty of Peace signed today with a view to regularising their position

The establishments and institutions mentioned above will, as regards fiscal charges of every kind, be treated on a footing of equality with similar Turkish establishments and institutions and will be subject to the administrative arrangements of a public character, as well as to the laws and regulations, governing the latter It is, however, understood that the Turkish Government will take into account the conditions under which these establishments carry on their work and, in so far as schools are concerned, the practical organisation of their teaching arrangements "

On 19 August 1992, the French Ministry of Foreign Affairs wrote to the Turkish Embassy in France, informing it that

"The Law of 8 April 1942 amended Part III of the Law of 1 July 1901, replacing the requirement for religious congregations to be authorised by allowing them to apply for legal recognition (and thus abolishing the offence of being an unauthorised congregation) Since that time this congregation has not sought recognition

This means that it has no separate legal existence or legal personality in France On the other hand, its various activities are carried out through the medium of associations and companies which themselves have legal status, which is not contrary to French law

Finally, the Congregation of Assumptionists, which is recognised by the Vatican, has existed under Pontifical Law since 26 November 1864 Its headquarters is in Rome, in via San Pio V"

COMPLAINTS

1. Invoking Article 1 of Protocol No. 1, the applicant Institut complains that the national courts have violated its right to the peaceful enjoyment of its possessions by ruling that its land should be registered in the name of the Treasury and the Department of Foundations. It claims that this deprivation of property was carried out in a manner contrary to international law

2 Further, all the applicants complain that the decision to register the land on which the places of worship are situated in the name of the Treasury constitutes a violation of the freedom of religion as protected by Article 9 of the Convention

... ...

THE LAW (Extract)

The applicants allege a violation of Article 1 of Protocol No. 1 and of Article 9 of the Convention.

The Government submit that the application is inadmissible for the following reasons:

- the applicants have not established that they are "victims";
- domestic remedies have not been exhausted in relation to the complaint under Article 9 of the Convention; and
- the six-month period has been exceeded in respect of the complaint under Article 1 of Protocol No 1.

The issue of whether the applicants can claim to be "victims"

The Government assert that the first applicant, in using the land granted to it in a manner incompatible with its religious objects, acted *ultra vires* and should no longer be protected by the Convention's review mechanism with regard to its claims of ownership

Emphasising the Institut's lack of legal personality, the Government also point out that the application was introduced by physical persons and that the parish priest is acting "as the priest of the Church of the Assumption, and not as the legal representative of any artificial person".

The applicants contest these arguments. They submit that the Institut, which receives no State aid, was forced to start renting out its premises in order to finance the needs of the church. According to the applicants, if the Institut is cut off from its financial lifeblood, it will no longer be able to hold religious services or ensure the survival of the church.

The applicants maintain, relying on the attestation from the Vatican, that the Congregation has been recognised as having legal personality by the Vatican since 1875 and that the Assumptionists are part of this Congregation They emphasise that the *Institut de Prêtres Français* or Augustinians of the Assumption is represented by its religious superior and by the Secretary General of the Congregation.

The Commission notes that the application was introduced by two applicants, that is, the *Institut de Prêtres Français* or Augustinians of the Assumption, a canon-law entity, on the one hand, and a group of individually-named parishioners on the other

The Commission considers that the applicant Institut can be considered as having standing to introduce an application as a "non-governmental organisation" within the meaning of Article 25 of the Convention (see, *mutatis mutandis*, No. 12242/86, Dec 6.9.89, D.R. 62, p 151 and Eur. Court HR, judgment in the case of the Holy Monasteries v Greece of 9 December 1994, Series A no. 301-A, p. 28, para. 49)

The Commission recalls, further, that a church body or an association with religious or philosophical objects is capable of holding and exercising the rights contained in Article 9 of the Convention (see No 12587/86, Dec. 14.7.87, D R 53, p 241)

The Commission notes that the individual applicants, who are a group of priests and parishioners who were not party to the proceedings in issue, complain only of a violation of Article 9 of the Convention, submitting that, if the Institut is cut off from its financial life-blood, it will no longer be able to hold religious services or ensure the survival of the Church Since they would, in this respect, be directly affected by the measure under challenge, the Commission considers that they may claim to be victims within the meaning of Article 25 of the Convention

The issue of exhaustion of domestic remedies and breach of the six-month rule

The Government raise a preliminary objection to the effect that domestic remedies have not been exhausted with regard to the complaint based on Article 9 of the Convention. They assert that the first applicant raised this complaint "incidentally" in the course of the proceedings concerning its title. They point out that sections 175 and 176 of the Criminal Code make it an offence to prevent or disrupt the holding of religious ceremonies or to destroy or damage religious objects

The Government also submit that the applicant Institut could have sued the State for damages in relation to its claim that the authorities' interference with its property rights affects its freedom of religion.

The Government raise a further preliminary objection to the effect that the application was introduced out of time within the meaning of Article 26 of the Convention They claim that more than six months expired between the date of the final domestic decision that is, 12 April 1994, the date of the Court of Cassation judgment holding that the land should be registered in the name of the Treasury and the Department of Foundations and the date on which the application was lodged with the Commission

The first applicant contests these arguments It maintains that it raised the complaints which it is now submitting to the Commission before the domestic courts

The first applicant also points out that it lodged an application for rectification of a judgment It considers that the "final decision" within the meaning of Article 26 of the Convention is the Court of Cassation judgment of 19 September 1994

Article 26 of the Convention provides that the Commission may deal with the matter only after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken The Commission recalls its established case-law, according to which someone who has raised in substance, before the national authorities the complaint he is putting to the Commission has exhausted domestic remedies (see No 16839/90, Dec 12 4 94, D R 77, p 22)

The Commission also recalls that the "final decision" refers only to domestic remedies which may be deemed to be effective and adequate to redress the relevant complaint (see, for example, No 9599/81, Dec 11 3 85, D R 42, p 33)

The Commission observes that the applicant *Institut* argued before the Court of Cassation that the decision to register the land on which the places of worship were situated in the name of the Treasury had violated freedom of religion as protected by Article 9 of the Convention

The Commission therefore considers that the first applicant has exhausted domestic remedies within the meaning of Article 26 of the Convention

The Commission notes that, in the instant case since the applicants' complaints relate to civil proceedings, an application to have a judgment rectified constitutes an effective domestic remedy under the generally recognised rules of international law It follows that the Court of Cassation judgment of 12 April 1994 cannot be taken as the starting-point of the six-month period Therefore, the Government's objection to the effect that the six-month period has been exceeded cannot be allowed (see, for example, no 23762/94 Dec 7 9 95, unpublished)

It follows that the application cannot be rejected for non-exhaustion of domestic remedies or breach of the six-month rule pursuant to Articles 26 and 27 para. 3 of the Convention.