AS TO THE ADMISSIBILITY OF

Application No. 20765/92
by Toyi Cyprien BATALI
against Switzerland

The European Commission of Human Rights sitting in private on 9 January 1995, the following members being present:

MM. H. DANELIUS, Acting President
C.L. ROZAKIS
S. TRECHSEL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
Mrs.J. LIDDY
MM. L. LOUCAIDES
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
E. KONSTANTINOV
G. RESS

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 1 August 1992 by Toyi Cyprien Batali against Switzerland and registered on 5 October 1992 under file No. 20765/92;

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

The applicant, a Togolese citizen born in 1945, is a chemical worker residing at Zurzach in Switzerland.

A. Particular circumstances of the case

On 11 April 1974 the applicant married another Togolese citizen at the Togolese Embassy in Bonn in Germany. The couple lived first in Germany before moving to Switzerland in 1980. The spouses and their three children have the right to domicile (Niederlassungsbewilligung) in Switzerland.

On 19 December 1986 the applicant's wife filed a divorce action which was transmitted to the Cantonal Court (Kantonsgericht) of the

Canton of Schaffhausen on 19 January 1987. Throughout the ensuing divorce proceedings in Switzerland the applicant was represented by a lawyer.

The applicant then filed various statements according to which only Togolese courts were competent to pronounce a divorce in his marriage, and if Swiss courts decided the case, they would have to apply Togolese law. On 18 October 1988 the Cantonal Court confirmed its jurisdiction to decide the divorce action.

On 2 December 1988, the applicant filed a divorce petition with the Court of Appeal at Lomé in Togo.

On 9 December 1988 the Court of Appeal (Obergericht) of the Canton of Schaffhausen rejected the applicant's appeal against the decision of 18 October 1988 as being out of time.

On 7 November 1989 the Cantonal Court pronounced a divorce in the applicant's marriage. In its decision the Court relied inter alia on Section 61 of the Federal Private International Law Act (Bundesgesetz über das Internationale Privatrecht; see below, Relevant domestic law). This judgment was confirmed, upon appeal, by the Court of Appeal on 18 October 1991.

The applicant filed an appeal (Berufung) with the Federal Court (Bundesgericht), complaining inter alia that his divorce would not be recognised by Togo as both spouses were Togolese citizens who had married on Togolese territory. The previous courts had also not taken into consideration the Togolese customs and sense of justice; they had not duly considered that he had instituted divorce proceedings in Togo.

On 20 May 1992 the Federal Court dismissed the applicant's appeal.

In its decision the Court noted that the Cantonal Court had correctly assumed the exclusive and non-derogable jurisdiction (ausschliesslicher und unverzichtbarer Gerichtsstand) of the Swiss courts, which was therefore also not called in question by the divorce proceedings instituted in Togo. Moreover, the previous courts had correctly assumed that the Federal Private International Law Act was the applicable Act, and that according to this Act Swiss law was applicable to the divorce; thus, Section 198 of this Act (see below, Relevant domestic law) provided that the applicable law was determined by this Act if a case was still pending before the court of first instance on 1 January 1989, which had been the case with the applicant's divorce. Sections 20 and 61 of the Act determined that Swiss law was applicable.

The Federal Court then examined whether the Court of Appeal's decision could be upheld under Swiss private international law. It considered that the Court of Appeal had correctly refused to take into consideration the alleged Togolese custom of polygamy, or that adultery was not a ground for divorce.

B. Relevant domestic law

Section 20 para. 1 (a) of the Federal Private International Law Act (Bundesgesetz über das internationale Privatrecht), which entered into force on 1 January 1989, provides that a natural person has his or her ordinary residence in the State, in which he or she resides with the intention of permanent residence (dauernden Verbleibens).

According to Section 59 (a) of this Act, the Swiss courts at the ordinary residence of the defendant will be competent to conduct the divorce proceedings.

Section 61 para. 1 of the Act states that divorce will be subject

to Swiss law.

According to Section 197 para. 1 of the Act, Swiss courts will remain competent for proceedings or requests which were pending at the moment of the entry into force of the Act, i.e. on 1 January 1989. According to Section 198, the applicable law is determined by the Act for proceedings pending before the court of first instance at the moment of the entry into force of the Act.

COMPLAINTS

The applicant complains that the Swiss courts, by admitting their own jurisdiction and applying Swiss law, committed serious errors.

He further complains that he is divorced in Switzerland, though his marriage, and his ties with his children, remain unchanged in Togo, where the Swiss divorce will not be accepted. His family is split up according to two different legal orders. He believes that Swiss views, to which he has no relationship, were imposed on him.

The applicant does not rely on any particular provision of the Convention.

THE LAW

1. The applicant complains that the Swiss courts, by admitting their own jurisdiction and applying Swiss law, committed serious errors.

With regard to the judicial decisions of which the applicant complains, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its established case-law (see e.g. No. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

The Commission has nevertheless examined the applicant's complaints under Article 6 para. 1 (Art. 6-1) of the Convention. However, it finds no indication that the applicant, who was represented throughout the proceedings by a lawyer, could not sufficiently explain his point of view or put forward any evidence which he regarded as pertinent.

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.

2. The applicant complains of his divorce in Switzerland which will not be accepted in Togo and alleges that Swiss traditions have been imposed on him.

However, even assuming that these complaints raise an issue under Article 8 (Art. 8) of the Convention, which guarantees to everyone inter alia the right to respect for his family life, or under Article 12 (Art. 12) of the Convention, which guarantees the right to marry and to found a family, the Commission sees no lack of respect for these rights in the present case.

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

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission	Acting President of the Commission
(H.C. KRÜGER)	(H. DANELIUS)