AS TO THE ADMISSIBILITY OF

Application No. 24372/94
by Alois BRÜGGER
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 28 June 1995, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
S. TRECHSEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

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 29 March 1994 by Alois BRÜGGER against Switzerland and registered on 10 June 1994 under file No. 24372/94;

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 is a Swiss citizen born in 1920. He is a doctor and resides in Zurich. Before the Commission the applicant is represented by Mr. Ludwig Raymann, a lawyer practising in Zurich.

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

The particular circumstances of the case

On 8 September 1988 the applicant joined with his car a row of cars which was waiting at traffic lights. Since he did not intend to drive past the traffic lights he crossed to the other carriageway and, after 55 metres, turned to a side street. He was observed by the police.

On 28 September 1988 the Zurich Police Judge (Polizeirichter) imposed a fine of 100 SFr on the applicant. This decision was later annulled.

On 27 March 1990 the Zurich Police Judge imposed a new fine of 100 SFr on the applicant pursuant to Section 90 para. 1 of the Federal Road Traffic Act (Bundesgesetz über den Strassenverkehr). The applicant was found guilty of a breach, on 8 September 1988, of Section 13 para. 2 of the Federal Road Traffic Regulations (Verordnung über die

Strassenverkehrsregeln). On 7 September 1990 the Zurich District Court (Bezirksgericht) upheld this decision.

The applicant introduced a plea of nullity (Nichtigkeitsbeschwerde) against the District Court's decision. On 5 March 1991 the Canton of Zurich Court of Appeal (Obergericht) quashed the decision appealed against as the District Court's record was not drawn up as provided for by the law. The case was referred back to the Zurich District Court.

On 14 June 1991 the Zurich District Court quashed the fine imposed on the applicant as the offence for which it had been imposed had become statute-barred. The District Court found, however, that the way in which the applicant had driven his car was not in conformity with the road traffic rules (in particular with Section 13 paras. 1 and 2 of the Road Traffic Regulations and with Section 36 para. 1 of the Federal Road Traffic Act), and was therefore negligent.

The District Court found it justifiable to impose court fees on the applicant pursuant to Section 42 of the Canton of Zurich Code of Criminal Procedure (Strafprozessordnung), as by his negligence the applicant had clearly unlawfully contravened a legal rule - that is, unlawfully in the civil sense - and thereby brought about the introduction of the proceedings ("leichtfertig", dass heisst in zivilrechtlichem Sinne widerrechtlich gegen eine Rechtsnorm in klarer Weise verstossen und dadurch die Einleitung des Verfahrens adäquat verursacht hat).

The court fees of 465 SFr and the fees for the proceedings before the Zurich Police Judge (426 SFr) were imposed on the applicant.

The applicant considered that he had not acted contrary to the road traffic rules and that the imposition of the court fees violated the presumption of innocence. He introduced a plea of nullity with the Canton of Zurich Court of Appeal.

The Court of Appeal found, as had the first instance court, that although the applicant could not be charged with a criminal offence, he had acted negligently within the meaning of civil law. This negligent and unlawful (in the civil sense) conduct was capable, in the court's view, of giving rise to a suspicion of an offence and was, therefore, in causal relationship with the introduction of the proceedings. On 25 February 1992 the Court of Appeal rejected the plea of nullity and imposed court fees of 332 SFr on the applicant.

The applicant introduced a public law appeal (staatsrechtliche Beschwerde) with the Federal Court (Bundesgericht). He alleged a violation, by imposition of the court fees after the proceedings had been discontinued, of Article 6 para. 2 of the Convention and of Article 4 (prohibition of arbitrariness) of the Federal Constitution (Bundesverfassung).

The Federal Court held, inter alia, that there was no direct or indirect allegation of an offence as regards the applicant in the Court of Appeal's decision of 25 February 1992. In the Federal Court's view the opinion expressed in the decision appealed against did not violate the presumption of the applicant's innocence.

On 8 September 1993 the Federal Court dismissed the public law appeal inasmuch as it was admissible and imposed court fees of 2,000 SFr on the applicant. The judgment was served on 1 October 1993.

Relevant domestic law and practice

Pursuant to Section 90 para. 1 of the Federal Road Traffic Act a person who breaches the road traffic rules is liable to imprisonment or to a fine.

Section 101 of the Criminal Code classifies breaches of rules of law which are punishable with imprisonment or a fine as minor offences (Übertretungen).

Section 36 para. 1 of the Federal Road Traffic Act and Section 13 paras. 1 and 2 of the Federal Road Traffic Regulations stipulate how a change of direction whilst driving is to be carried out.

Pursuant to Section 42 para. 1 of the Canton of Zurich Code of Criminal Procedure the costs of an investigation that was discontinued may be imposed completely or in part upon the accused person if the latter caused the institution of the investigation through his or her reprehensible or frivolous behaviour or if he or she impeded the conduct of the investigation.

According to the case-law of the Federal Tribunal the imposition of fees for criminal proceedings after discontinuation is contrary to the principle of the presumption of innocence if the decision contains a direct or indirect allegation that the criminal responsibility of the accused is involved. However, imposition of court fees after discontinuation of criminal proceedings is not considered as contrary to the Federal Constitution or to the Convention if it is substantiated by the fact that the accused clearly contravened, in a way imputable to him or her in the civil sense, a rule of behaviour incorporated in the Swiss system of law and thereby brought about the institution of the proceedings.

COMPLAINTS

The applicant alleges a violation of the presumption of innocence guaranteed by Article 6 para. 2 of the Convention by the imposition of the court fees after discontinuation of the proceedings.

In the applicant's view the decisions complained of contain an indirect allegation that criminal responsibility is imputable to him. He alleges, in particular, that the imposition of costs in criminal proceedings cannot be substantiated by behaviour imputable to the accused under the civil law.

Finally, the applicant considers that the Swiss courts violated the principle of presumption of innocence in his case since after the offence for which he had been fined became statute-barred, they derived his civil law responsibility (which allegedly had brought about the introduction of the proceedings) from his failure to act in a way compatible with the road traffic rules. In his view the latter are rules which are the same in both civil and criminal law as a criminal penalty is based directly on violation of these rules.

THE LAW

The applicant alleges a violation of Article 6 para. 2 (Art. 6-2) of the Convention by imposition of the court fees after discontinuation of the criminal proceedings against him.

Article 6 para. 2 (Art. 6-2) of the Convention reads as follows:

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Commission recalls the Convention organs' case-law according to which the mere fact of ordering court costs against an accused when the proceedings are discontinued cannot in itself amount to a violation of the presumption of innocence. However, a problem arises under Article 6 para. 2 (Art. 6-2) of the Convention if without the accused's having previously been proved guilty according to law a judicial decision concerning him reflects an opinion, in any form whatever, that

he is guilty (cf., e.g., Eur. Court H.R., Minelli judgment of 25.3.83, Series A No. 62, p. 18, para. 37).

In the present case the court fees were imposed on the applicant pursuant to Section 42 para. 1 of the Canton of Zurich Code of Criminal Procedure.

The Commission notes that the fees were charged to the applicant by the District Court on the ground that he had acted negligently and thereby contravened a legal norm and brought about the proceedings. The District Court emphasised that he had acted contrary to civil law. The Court of Appeal also referred to negligence within the meaning of civil law, and the Federal Court found that there was not, in the Court of Appeal's decision, any allegation of a criminal offence.

In these circumstances, the Commission considers that the applicant's right to presumption of innocence under Article 6 para. 2 (Art. 6-2) of the Convention has not been violated.

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

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)