AS TO THE ADMISSIBILITY OF

Application No. 18568/91
by C.G.
against Switzerland

The European Commission of Human Rights sitting in private on 1 December 1993, the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS

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 3 June 1991 and by C.G. against Switzerland and registered on 22 July 1991 under file No. 18568/91;

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 they have been submitted by the applicant, may be summarised as follows.

The applicant, born in 1964, is a Swiss national and resident at Gantenschweil. He is an assembler by profession. Before the Commission he is represented by Mr. D. Buchser, a lawyer practising in Reinach.

On 20 June 1989 the Kulm District Office (Bezirksamt) issued a penalty order (Strafbescheid) against the applicant for having contravened a court order, assaulted Mr. W. and caused damage to the property of Mr. S. It imposed a fine of SFR 800. Messrs. W. and S., who participated in the proceedings as private parties, were referred to the civil courts as regards their compensation claims.

Upon the applicant's objection (Einsprache) against the penalty order, the criminal proceedings against him were continued before the Kulm District Court (Bezirksgericht). In these and the following proceedings, the applicant was assisted by his counsel Mr. Buchser.

On 12 December 1989 the Kulm District Court, having heard in particular the applicant and his wife, Mr. W. and his wife, Mr. S. as well as a further witness, found the applicant guilty of having committed bodily assault and caused damage to property, but acquitted him of the remaining charge. It imposed a fine of SFR. 500, and also

ordered him to pay to Mr. S. compensation amounting to about SFR. 161. Messrs. W. and S. were referred to the civil courts in respect of the remainder of their claims.

As regards the offence of bodily assault, the District Court considered in particular that Mr. W., in the course of an altercation with the applicant, had suffered a fracture of a rib, as certified by a medical practitioner. Assessing the evidence, the Court found no indication that Mr. W. had suffered this injury on another occasion. The District Court, having regard to the repeated neighbourly disputes and the course of the altercation in question, as described by the witnesses, accepted that the applicant was in a position to act in defence of his wife. However, he could have intervened without any major use of force. The fact that he instead kicked Mr. W. with his foot constituted an excess of his right to act in defence.

The District Court further found that the applicant, when furiously attempting to call Mr. S. to account for several incidents while they were both driving with their cars on a public road, had wilfully destroyed one window of the car of Mr. S. In this respect, the District Court had regard to the statements of the applicant and his wife, Mr. S. and a further witness of the event in question.

On 2 May 1990 the Court of Appeal of the Canton Aargau (Obergericht), upon the applicant's appeal (Berufung), reduced the fine to SFR. 250, and dismissed the remainder of the appeal.

The Cantonal Court confirmed the findings of the lower instance. It considered in particular that the questioning of Mr. W. as well as of Mr. S. as witnesses (Zeugen) and not only as a person giving information (Auskunftsperson) could not be objected to. According to S. 105 para. 1 of the Aargau Code of Criminal Procedure (Strafprozess-ordnung), persons suspected of a criminal offence or otherwise being biassed should not be questioned as witness, but only as person giving information on the offence in question. The Court of Appeal, referring to its case-law, considered that persons, who had brought charges against the accused or participated in the proceedings as private party, could not in general be regarded as biased.

On 3 April 1991 the Federal Court (Bundesgericht) dismissed the applicant's application for a declaration of nullity (Nichtigkeits-beschwerde).

Furthermore, on 3 April 1991 the Federal Court dismissed his public-law appeal (staatsrechtliche Beschwerde) against the judgment of 2 May 1990. The Federal Court considered in particular that it was irrelevant whether Mr. W. should not have been heard as witness, but only as person giving information, because there was no indication that his testimony had more weight, because he had been questioned as witness. Even regarding his statements as those of a person giving information, the assessment of evidence by the lower instances did not appear arbitrary. As regards the similar complaint in respect of the questioning of Mr. S., the Federal Court also noted that there had been further evidence, and that Mr. S. had not been regarded as more trustworthy due to the fact that he had been questioned as witness.

COMPLAINTS

The applicant complains under Article 6 para. 3 (d), of the Convention about his conviction by the Swiss Courts and of the court proceedings concerned. He submits in particular that the taking of evidence was unfair in that two persons who were biased against him were questioned as witnesses.

THE LAW

The applicant complains under Article 6 para. 3 (d) (Art. 6-3-d) of the Convention about his conviction by Swiss courts and

also of the proceedings concerned.

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 (see e.g. No. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236; No. 5258/71, No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

As regards the alleged unfairness of the trial, in particular the taking of evidence, the Commission recalls that the guarantees in paragraph 3 of Article 6 (Art. 6-3) are specific aspects of the right to a fair trial set forth in paragraph 1 (see Eur. Court H.R., Asch judgment of 26 April 1991, Series A no. 203, p. 10, para. 25). The Commission will, therefore, consider the applicant's complaint under the two provisions taken together.

The admissibility of evidence is primarily a matter for regulation by national law, and, as a rule, it is for the national courts to assess the evidence before them. The task of the Convention organs is to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair. In particular, all the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument (cf. Eur. Court H.R., Asch judgment, loc. cit., paras. 26-27).

The Commission notes that the Kulm District Court, in its judgment of 12 December 1989, based the applicant's conviction of having committed bodily assault and having caused damage to property inter alia on the respective statements - as witnesses - of Messrs. W. and S., i.e. the victims of the offences in question and private parties to the criminal proceedings. On 2 May 1990, the Court of Appeal of the Canton Aargau confirmed the applicant's conviction in respect of these two offences and considered in particular that the questioning of Messrs. W. and S. as witnesses could not be objected to. Referring to S. 105 para. 1 of the Aargau Code of Criminal Procedure, the Court of Appeal observed that a private party to the proceedings could not be generally regarded as biased. The Federal Court, in its judgment of 3 April 1991, found this matter to be irrelevant on the grounds that, even regarding their statements as those of persons giving information, the assessment of evidence by the lower courts did not appear arbitrary, and that there was further evidence.

The Commission finds that Messrs. W. and S. were heard in person at the trial before the Kulm District Court, where the applicant, who was assisted by counsel, had the opportunity to put questions to them and to challenge in particular their trustworthiness. Moreover, their statements did not constitute the only item of evidence on which the first-instance court based its judgment. The Kulm District Court had also regard to a medical certificate and to the statements of further witnesses. The Commission finds no indication that the fact that Messrs. W. and S. were questioned as witnesses and not as persons giving information within the meaning of S. 105 para. 1 of the Aargau Code of Criminal Procedure disregarded the applicant's defence rights, or otherwise rendered the proceedings unfair.

Consequently, in the circumstances of the present case, the Commission finds no appearance of a violation of the rights of the defence, or of the applicant's right to a fair trial, as guaranteed by Article 6 (Art. 6) of the Convention.

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 unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (A. WEITZEL)