AS TO THE ADMISSIBILITY OF

Application No. 18243/91
by G.F.
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 13 May 1992 , the following members being present:

MM. G. JÖRUNDSSON, Acting President of the Second Chamber
S. TRECHSEL,
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
A.V. ALMEIDA RIBEIRO

Mr. K. ROGGE, Secretary to the Second 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 28 March 1991 by G.F. against Switzerland and registered on 23 May 1991 under file No. 18243/91;

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 submitted by the applicant, may be summarised as follows.

The applicant, a Swiss citizen born in 1938, is a businesswoman residing at G. in Switzerland. Before the Commission she is represented by Mr. E. Perler, a lawyer practising in Fribourg in Switzerland.

I.

The background of the application is the sinking of a ship, the "Lucona", off the Maldives in the Indian Ocean on 23 January 1977, causing the death of six persons. The freight going down with the ship allegedly consisted of a uranium recycling plant, insured by Mr. P., an Austrian citizen, for the Z. AG company, to the amount of 125,000,000 FF.

Doubts arose as to the circumstances of the accident and the nature of the freight. Criminal proceedings were instituted in Austria against Mr. P.

An Austrian journalist, Mr. Pretterebner, subsequently wrote a book, "The Lucona Case" ("Der Fall Lucona"), in which he investigated the affair and critically assessed the role of various persons involved.

II.

In 1985 criminal proceedings were instituted in Switzerland against the applicant, who was on the executive board (Verwaltungsrat) of the Z. AG company, on suspicion of fraud.

Between 17 April 1990 and 1 June 1990 the trial took place before the Sense District Court (Bezirksgericht). The Court consisted of five judges.

During the trial the five judges travelled to Vienna to hear witnesses. One such hearing, at which an Austrian judge presided, took place on 25 April 1990.

After this hearing, the Austrian judge asked the five Swiss judges to sign a book belonging to his secretary. The book at issue was a copy of Mr. Pretterebner's "The Lucona Case". The Austrian judge explained this request with the fact that his secretary collected the signatures of every person involved in the case. As a result, all five Swiss judges signed their names in the book.

On 30 April 1990, during the trial before the Sense District Court, the applicant challenged the five judges. She claimed in particular that the judges were biased, or at least that doubts arose as to their impartiality, as they had signed a book which was well-known for inculpating both Mr. P. and the applicant.

On the same day, 30 April 1990, five substitute judges examined and then dismissed the challenge.

On 1 June 1990 the Sense District Court sentenced the applicant to imprisonment on account of an attempt of fraud.

The applicant filed a public law appeal (staatsrechtliche Beschwerde) with the Federal Court (Bundesgericht) in which she complained of the lack of impartiality of the District Court judges. She claimed that the book was so well-known that the judges must have had knowledge of it and that the signatures clearly supported the author's views.

On 10 September 1990 the Federal Court dismissed the applicant's public law appeal, the decision being served on the applicant on 3 October 1990.

In its decision the Federal Court found that there was no reason to doubt the District Court judges' statement according to which, when they signed the book in Vienna, they had not read it and were not aware of its contents or the author's conclusions. In the Court's opinion, if the District Court judges complied out of politeness with the request to sign the book, this only constituted an autograph (Autogramm) and not an opinion given by the judges.

The Court further considered that "objectively seen, a third person, having knowledge of the signing of the book, would not necessarily have to assume that the judges were thereby agreeing with the assessment of the case by the author" ("Ein Dritter, der von der Signierung Kenntnis erhielt, musste bei objektiver Betrachtung nicht den Eindruck erhalten, die Richter hätten damit die Beurteilung der Sache durch den Verfasser zu ihrer eigenen gemacht").

COMPLAINTS

The applicant complains that she was not heard by an "independent and impartial tribunal" within the meaning of Article 6 para. 1 of the Convention. She complains in particular that the signing of the book

at issue, which was a well-known bestseller, at least raised doubts as to the impartiality of the District Court judges, since it could be interpreted as endorsing the assessment of the case by the author. It was questionable whether those District Court judges who were lay judges would not have been influenced by the book's conclusions.

THE LAW

The applicant complains of the lack of impartiality of the District Court judges who had signed the book at issue. She relies on Article 6 para. 1 (Art. 6-1) of the Convention which states, in so far as relevant:

> "In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law."

The Commission recalls that the existence of impartiality must be determined according to a subjective test, that is on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is by ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubts in this respect (see Eur. Court H.R., De Cubber judgment of 26 October 1984, Series A No. 86, pp. 13-14, para. 24).

As to the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary. In the present case the applicant expressly does not contest the personal impartiality of the various judges.

Under the objective test, it must be determined whether, apart from the judge's personal conduct, there are ascertainable facts which may raise doubts as to his impartiality. In this respect even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all in the parties to the proceedings. Accordingly, any judge in respect of whom there is a legitimate reason to fear lack of impartiality must withdraw (see De Cubber judgment, loc. cit., p. 14, para. 26). This implies that in deciding whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the view of the complaining party is important but not decisive. What is decisive is whether this fear can be said to be objectively justified.

In the present case the applicant submits that the fact that the judges signed a book which inculpated the applicant at least raised doubts as to their impartiality.

The Commission observes that the District Court judges, when signing the book, thereby apparently complied out of politeness with a request of their Austrian colleague. The latter told them that the book belonged to his secretary who, in her private capacity, collected the signatures of all persons involved with the case. It is understandable that misgivings should arise, in the mind of the applicant, about the appropriateness of members of the judiciary giving such signatures which, in the Commission's view, indicates a certain lack of sensitivity. Nevertheless, objectively seen, the District Court judges were not expressing their opinions for or against the views contained in the book; they were not even considering its merits. Rather, all judges were merely giving their autographs.

It follows that the mere fact that the judges signed the book at issue cannot in itself justify fears as to their lack of impartiality.

As a result, the applicant's complaints do not disclose any appearance of a violation of Article 6 para. 1 (Art. 6-1) of the

Convention. Her application must therefore be declared 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 Acting President of the Second Chamber

(K. ROGGE) (G. JÖRUNDSSON)