AS TO THE ADMISSIBILITY OF

Application No. 23149/93
by G.G.
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 6 September 1995, the following members being present:

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

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 1 October 1993 by G.G. against Switzerland and registered on 22 December 1993 under file No. 23149/93;

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 computer scientist, is a Swiss national born in 1945 and residing in Lausanne. Before the Commission he is represented by Mr. Jean Lob, a lawyer practising in Lausanne.

On 11 August 1993 the applicant was arrested by order of the Prosecutor General (Procureur général de la Confédération suisse). He was suspected of having collaborated with Soviet intelligence agents between 1979 and 1992 and having revealed technological information to which he had access by virtue of his professional activities.

On the day of the arrest the applicant was questioned for several hours at a police station. In the evening he was transferred to a prison.

On 12 August 1993, the morning following the arrest, the applicant requested a lawyer and demanded to be released. It was agreed between the applicant and the investigating police officer that the applicant's wife would choose and contact a lawyer and that the applicant would petition the Prosecutor General in writing for his

release.

In the afternoon a lawyer chosen by the applicant's wife brought, for the applicant to sign, a power of attorney and a petition for release addressed to the Prosecutor General. The applicant signed these documents.

On 13 August 1993, the request for release and a request for permission for the lawyer to visit his client were refused by the Prosecutor General. The decision stated inter alia that the investigation had just begun, that it was necessary to question the applicant further and that, in view of the fact that the circle of persons involved in the alleged collaboration was still unknown, there was a danger of collusion.

Also, in a telephone conversation with the applicant's lawyer, the prosecutor in charge of the case allegedly declined to assure him that his correspondence with his client would not be examined by the authorities.

Thereupon the lawyer telephoned his client in prison and informed him that he had been refused authorisation to visit him during the coming weekend.

On 16 August 1993 the applicant's lawyer submitted a complaint to the Ministry of Justice (Département Fédéral de Justice et Police) challenging the decision of the Prosecutor General.

On 19 August 1993 the Ministry of Justice informed the lawyer that in view of a recent change in the legislation, they had requested an opinion from the Federal Court (Tribunal fédéral) about their competence to examine the complaint. On 23 August 1993, after the Federal Court had found that the issue was within its competence, the applicant's lawyer submitted his observations and a formal complaint to the Court.

In the meantime the applicant was interrogated for several hours each working day.

On Monday, 16 August 1993 two letters from the lawyer dated 13 and 16 August 1993 and a copy of the decision of the Prosecutor General of 13 August 1993 were delivered to the applicant.

On the morning of 26 August 1993 the applicant received a letter from his lawyer dated 23 August 1993.

In the evening of the same say he was released by order of the Prosecutor General.

On 15 September 1993 the Federal Court struck out of its list the applicant's complaint concerning the refusal of the Prosecutor General to release him and to authorise his lawyer's visits as it had become without object.

On 14 February 1995 the Prosecutor General suspended the preliminary investigation against the applicant. The decision stated inter alia that although it had been established that the applicant had had numerous contacts with Soviet secret agents, there had not been sufficient proof that the applicant had unlawfully revealed secret information during these meetings.

Upon the applicant's claim for damages, the Federal Court (Chambre d'accusation du Tribunal fédéral) on 6 June 1995 awarded the applicant an indemnity of 200 SF for each day of his detention. The Court stated that a suspension of criminal proceedings at the preliminary police inquiry stage could give rise to a claim for damages whenever the acts of the investigation authorities had involved a

serious prejudice for the accused. Since the detention on remand was in itself such a serious prejudice, the applicant was entitled to an equitable indemnity.

COMPLAINTS

The applicant complains under Article 6 para. 3(c) of the Convention that he was deprived of his right to have contact with his lawyer during the sixteen days of detention. The refusal of the authorities to guarantee the privacy of the correspondence between the applicant and his lawyer during the detention was also contrary to Article 6 para. 3(c) of the Convention.

The applicant also complains under Article 13 in conjunction with Article 6 para. 3(c) of the Convention that the decision of the Federal Court to strike the applicant's appeal out of its list amounted to a denial of an effective remedy.

THE LAW

1. The applicant complains under Article 6 para. 3(c) (Art. 6-3-c) of the Convention of the restrictions on contact with his lawyer and of the authorities' refusal to promise that they would not monitor the correspondence between him and his lawyer.

Article 6 paras. 1 and 3(c) (Art. 6-1, 6-3-c) provide, insofar as relevant, as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ...;
...

3. Everyone charged with a criminal offence has the following minimum rights:
...
c. to defend himself in person or through legal assistance ..."

The Commission recalls that the primary purpose of Article 6 (Art. 6), as far as criminal matters are concerned, is to ensure as a whole a fair trial by a "tribunal" competent to determine "any criminal charge". Nevertheless, the requirements of paragraph 3(c) of Article 6 (Art. 6-3-c) could be relevant in pre-trial proceedings insofar as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with them (Eur. Court H.R., Imbrioscia judgment of 24 November 1993, Series A no. 275, p. 13, para. 36; cf. also Can v. Austria, Comm. Report 12.7.84, paras. 49, 50, Eur. Court H.R., Series A no. 96, pp. 15, 16).

However, under Article 25 (Art. 25) of the Convention the Commission may examine complaints only from persons claiming to be victims of a violation of one of the Convention provisions.

In the present case the applicant's complaints concern an early stage of the proceedings, namely the police inquiry against him, and not a "trial" before a "tribunal" within the meaning of Article 6 (Art. 6) of the Convention. The criminal proceedings against the applicant were suspended at this stage and he has never been indicted and brought to trial. Therefore, he has not in fact suffered any detrimental effect of the alleged violations of Article 6 para. 3(c) (Art. 6-3-c) and he cannot claim to be a victim of such violations. The Commission has also noted that the applicant has received compensation for the prejudice entailed by his detention on remand.

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. Under Article 13 (Art. 13) the applicant complains that he had no effective remedy at his disposal in respect of the above complaint.

The Commission finds that the applicant has not made out an arguable claim under Article 6 para. 3(c) (Art. 6-3-c) of the Convention (cf. Eur. Court H.R., Plattform "Ärzte für das Leben" judgment of 21 June 1988, Series A no. 139, p. 11 et seq., para. 27 et seq.).

The remainder of the application is therefore 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 Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)