AS TO THE ADMISSIBILITY OF

Application No. 26953/95
by H. H.
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 4 September 1996, the following members being present:

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

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 15 November 1994 by H. H. against Switzerland and registered on 3 April 1995 under file No. 26953/95;

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, a Swiss citizen born in 1953, is a bank employee residing at Koppigen in Switzerland. Before the Commission she is represented by Mr K. Hofstetter, a lawyer practising in Lucerne.

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

On 26 June 1984 the applicant, an experienced horsewoman, went to the stable of F.R. where she should have trimmed a horse for a wedding ceremony. She tied the horse with a nylon rope to a metal bar. The horse tore itself away, and the applicant was severely injured by the metal bar.

The applicant filed an action for damages against F.R., claiming that F.R. was responsible on four grounds:

- according to Section 58 of the Swiss Code of Obligations (Obligationenrecht) as owner of the stable in that he had not provided for sufficient means to tie up horses; this provision states that the owner of a building or of another installation shall have to compensate

any damage resulting inter alia from faulty works or from insufficient maintenance;

- according to Section 41 of the Code of Obligations, as he had culpably failed to provide for warning signs and for the necessary means to tie up horses; this provision states that whoever unlawfully causes damage to somebody else, either intentionally or negligently, is obliged to offer compensation;

- as installation owner of the metal bar which the applicant had employed when tying up her horse;

- under Section 41 of the Code of Obligations, as he had culpably failed to make the metal bar safe.

After conducting an oral hearing, the Bern Court of Appeal (Appellationshof) gave its judgment on 19 May 1993.

In its judgment the Court first found that for the time being the investigations had correctly been limited to the issue whether F.R. was liable for an installation failure or for any other reason. The Court further considered that if F.R. was not liable, the case could be dismissed; if, on the other hand, F.R. was liable, the proceedings would have to be continued and further evidence taken, in particular as to the amount of damages.

The Court then examined the facts and concluded that F.R. was liable for an installation failure. Thus, F.R. should have considered that third persons unknown to him would tie a horse to an unsuitable place and that an accident could result (er hatte vielmehr damit rechnen müssen, dass ihm nicht bekannte Dritte ... ein Pferd an einem ungeeigneten Ort anbinden würden und es derart u.U. zu einem Unfall hätte führen können). However, tolerating an acknowledged danger led as a rule to culpability with the result that, if a danger arose, there was responsibility according to Section 41 of the Code of Obligations. F.R. therefore was responsible as owner of the installation (Werkeigentümerhaftung) within the meaning of Section 58 of the Code of Obligations.

F.R. then filed an appeal (Berufung) with the Federal Court (Bundesgericht).

On 22 February 1994 the Federal Court upheld the claim raised by F.R. in his appeal and correspondingly dismissed the applicant's action. The decision was served on 22 June 1994.

In its decision the Court found inter alia that the applicant's own fault was so intensive that there was no longer an adequate causal link between the installation fault and the injury. Thus:

<Translation>

> "the injured person did not in the present case use the faulty installations. Rather, she overcame the existing fault by means of a measure of expediency; thereby, according to the previous court, she should have realised that the solution chosen did not offer the required security. Thus, she accepted the possibility that the horse would tear itself loose. She cannot therefore exculpate herself with the observation that the accident would not have happened if the installation had been faultless, i.e. if there had been an adequate means to tie a horse. Rather, it must be assumed that she realised the insufficiency of the installation actually used and acted on her own responsibility, and that from the point of view of culpability she must be reproached for this conduct. If a conduct at one's own risk leads additionally to one's own fault in a particular situation of danger, there is no longer a responsibility of the owner of

the installation."

COMPLAINT

The applicant complains under Article 6 para. 1 of the Convention that the courts only dismissed her claim that there had been an installation failure; they had not dealt with the other three claims which she had raised before the domestic courts. In particular, the culpability of F.R. should also have been examined. She submits that the Federal Court's decision came as a complete surprise to her.

THE LAW

The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that the domestic courts only dealt with one of her four claims. She submits that the culpability of F.R. should also have been examined. Moreover, she was surprised by the Federal Court's decision.

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. 21283/93, Dec. 5.4.94, D.R. 77-A, pp. 81, 88).

It is true that the applicant also relies on Article 6 para. 1 (Art. 6-1) of the Convention.

In this respect, the Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention obliges States to give reasons for their judgments. However, this provision cannot be understood as requiring a detailed answer to every argument. The extent to which this duty to give reasons applies may vary according to the nature of the decision. The question whether or not a court has failed to fulfil the obligation, deriving from Article 6 (Art. 6) of the Convention, to state reasons can only be determined in the light of the circumstances of the case (see Eur. Court HR, Hiro Balani v. Spain judgment of 9 December 1994, Series A no. 303-B, p. 29 et seq., para. 27).

In the present case the Commission notes that the Bern Court of Appeal in its judgment on 19 May 1993 concluded that F.R. was liable for an installation failure. In that court's view, F.R. should have considered that third persons unknown to him would tie a horse to an unsuitable place and that an accident could result.

Nevertheless, in its decision of 22 February 1994, the Federal Court quashed this judgment. Thus, the Court considered that the applicant's own fault had been so serious that there was no longer an adequate causal link between the installation fault and the injury. The applicant had accepted the possibility that the horse would tear itself loose. She could not therefore exculpate herself by arguing that the accident would not have happened on other grounds, in particular if there had been an adequate means to tie a horse.

Thus, the Federal Court concluded that the applicant was herself responsible for any damage suffered. By establishing the applicant's responsibility it follows that the Federal Court dismissed any other claims of the applicant according to which other persons might become responsible.

It cannot therefore be said that the Swiss courts failed to

fulfil the obligation, deriving from Article 6 (Art. 6) of the Convention, to give a reasoned decision.

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.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber