AS TO THE ADMISSIBILITY OF

Application No. 23014/93
by Werner HÄGELE
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 17 May 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 15 June 1993 by Werner Hägele against Switzerland and registered on 26 November 1993 under file No. 23014/93;

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, as submitted by the applicant, may be summarised as follows.

The applicant, a Swiss citizen born in 1940, is a vocational adviser residing at Schaffhausen in Switzerland.

The applicant worked as a vocational adviser with the Canton of Schaffhausen. On 30 August 1988 the Schaffhausen Government (Regierungsrat) decided not to re-elect the applicant for the period 1989-1992, inter alia as he had not accepted orders from his superiors. By decision of 20 September 1988 the Government ordered that his pension rights (Austrittsguthaben) be paid out; however, no severance allowance (Abgangsentschädigung) was paid out as the applicant was considered himself to be culpable (verschuldet) for not being re-elected.

In the ensuing proceedings the applicant was represented by a lawyer.

The applicant's appeals of 21 September and 11 October 1988 against these decisions were dismissed by the Court of Appeal (Obergericht) of the Canton of Schaffhausen on 7 July 1989.

The applicant filed an administrative law appeal (Verwaltungs-

gerichtsbescherde) which the Federal Insurance Court (Eidgenössisches Versicherungsgericht) upheld on 24 October 1990 to the extent that the applicant had actually intended to claim a pension right as a result of which an action should have been filed against the Cantonal Pension Office (Pensionskasse) rather than an appeal against the Government of the Canton of Schaffhausen.

On 14 December 1990 the Cantonal Pension Office determined the amount to be paid out to the applicant. His appeal was dismissed by the Administrative Commission of the Cantonal Pension Office on 27 February 1991, whereupon he filed an action with the Court of Appeal, claiming a severance allowance, which the Court of Appeal dismissed on 19 June 1992.

In his administrative law appeal to the Federal Insurance Court the applicant contested the decision of the Court of Appeal and requested a severance allowance of 114.570 SFr as he was not himself culpable (unverschuldet) for not having been re-elected.

On 13 January 1993 the Federal Insurance Court dismissed the applicant's appeal. The decision was served on the applicant on 25 January 1993.

In its decision the Federal Insurance Court first considered that it was not bound by the conclusions of the Court of Appeal. The Court then dealt with the notion of culpability (Verschulden). It further found that the applicant had resisted the orders of his superiors and had disclosed a lack of cooperation; as a result, the Canton of Schaffhausen could not be expected to re-elect him. The Court also found that it was unnecessary to take further evidence as the facts, insofar as they were relevant for the decision, had been sufficiently established (hinreichend abgeklärt).

COMPLAINTS

The applicant complains, without reference to any particular Convention provision, about the unfairness and the outcome of the various proceedings. In respect of the judgment of the Federal Insurance Court of 13 January 1993 he complains that he did not have an oral hearing; that he could not sufficiently consult the case-file; that no witnesses were heard; that the principle of the presumption of innocence was breached; and that he had suffered discrimination inter alia in respect of other persons in similar situations.

The applicant also invokes other international instruments concerning social security and benefits in case of invalidity and old age.

THE LAW

The applicant complains about the unfairness and the outcome of the various proceedings.

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. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

The Commission has examined the applicant's complaints about the

alleged unfairness of the proceedings under Article 6 para. 1 (Art. 6-1) of the Convention.

Insofar as the applicant complains that the Federal Court in the proceedings leading to its judgment of 13 January 1993 did not hear any witnesses, the Commission recalls that as a rule, it is for the national courts to assess the taking of evidence before them. The Convention organs' task is to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair (see mutatis mutandis Eur. Court H.R., Asch judgment of 26 April 1991, Series A no. 203, p. 10, para. 26).

In the present case the applicant has not substantiated before the Commission which witnesses should have been heard. The Commission further notes that the present proceedings were conducted at altogether six levels, and that the applicant, who was represented by a lawyer, thus had sufficient opportunity to present his point of view or adduce any evidence which he regarded as pertinent.

Insofar as the applicant complains that the Federal Insurance Court did not conduct an oral hearing, the applicant has not shown that he filed such a request in the proceedings before the Federal Insurance Court. He may therefore reasonably be considered as having waived his right to a public hearing in these proceedings (see Eur. Court H.R., Schuler-Zgraggen judgment of 24 June 1993, Series A no. 263, p. 20, para. 58).

Insofar as the applicant complains that he could not sufficiently consult the case-file in the proceedings before the Federal Insurance Court, the applicant has not explained which documents were withheld from him. In any event, he has not shown that he filed a request with the Federal Insurance Court to be granted access to the case-file.

Insofar as the applicant complains that in the proceedings before the Federal Insurance Court the principle of the presumption of innocence was breached, and that he had suffered discrimination inter alia in respect of other persons in similar situations, the Commission finds no issue in this respect.

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 Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)