AS TO THE ADMISSIBILITY OF

Application No. 23135/93
by J.-P. E.
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 12 October 1994, the following members being present:

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

Mr. K. ROGGE, 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 8 July 1993 by J.-P. E. against Switzerland and registered on 20 December 1993 under file No. 23135/93;

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 Swiss citizen born in 1948, is a lawyer residing in Geneva.

On 11 December 1990 the Attorney General (Procureur général) of the Canton of Geneva issued a decision to debar the applicant from the Geneva Bar. On 1 July 1991 the applicant's appeal against this decision was dismissed by the Cantonal Disciplinary Commission of the Bar.

The applicant filed an appeal against this decision to the Administrative Court of the Canton of Geneva, requesting an extension of the time-limit to file a memorial. He was granted the extension until 25 October 1991 and a further extension until 20 November 1991. Apparently the applicant failed to file a memorial. By registered letter of 4 December 1991 the applicant informed the Administrative Court of his intention to leave Switzerland for several weeks. He requested the Court to address all correspondence concerning the case, including any final decision, to his address in Panama. There was no reply to this letter.

On 10 December 1991 the applicant's friend, whom he requested to collect his mail during his absence, wrote a letter to the Court sending back certain letters transmitted to the applicant's address in Geneva. He also gave the applicant's address abroad.

On 11 December 1991 the Administrative Court declared the applicant's appeal inadmissible as he had failed to file a memorial to the Court. On 19 December 1991 this decision was sent by registered letter to the applicant's address in Geneva. Not having been served upon the applicant due to his absence, it was subsequently returned to the Administrative Court.

The Court then apparently again sent its decision to the applicant's Geneva address. This decision was forwarded to the applicant by his friend, but did not reach him in Panama.

On 17 February 1992 the President of the Administrative Court informed the Public Prosecutor that the judgment of 11 December 1991, not having been claimed at the post office, was to be considered as having been served on 27 December 1991. He further stated that no appeal had duly been filed with the Federal Court, for which reason the judgment had become final. On 18 February 1992 the Public Prosecutor declared the debarring of the applicant as being definitive.

On 25 March 1992, while representing a client during a court hearing, the applicant learned that he had been debarred. On 1 April 1992 he requested the President of the Administrative Court to send to him a copy of the judgment. This was refused in 15 April 1992 by the President of the Administrative Court who considered that the serving of the decision at the Geneva address had been "regular" ("regulière") and thus there was no need to serve it again.

On 16 May 1992 the applicant filed a public law appeal with the Federal Court. The applicant submitted that the Administrative Court had acted arbitrarily and contrary to the principle of good faith, having deliberately sent the decision to an address where he could not be reached. The applicant complained that he had thus been denied access to court.

On 30 September 1992 the Federal Court declared the applicant's appeal inadmissible. The Federal Court took the view that the serving of the decision at the applicant's address in Geneva was correct, even though the applicant had informed the Administrative Court of his intended absence. The Court found that the Administrative Court "could and had to" ("pouvait et devait") send the decision to the applicant's Geneva address, as the applicant was under an obligation to have a permanent office address in the Canton. The Federal Court also considered it irrelevant that other courts of the same Canton had notified their decisions taken during the applicant's absence to his address abroad. The Federal Court further considered that it fell to the applicant to take appropriate steps to ensure that his judicial mail would duly be served on him. The Federal Court also found that, in any event, the public law appeal would have to be declared inadmissible as it had been introduced out of time.

The judgment of the Federal Court was served on the applicant on 30 December 1992. The applicant claimed it at the post office on 11 January 1993.

COMPLAINTS

The applicant complains under Article 6 of the Convention that the decision of the Administrative Court was sent to his Geneva address even though the Court fully knew that it would not reach him there. The applicant submits that the Administrative Court was under no legal obligation to do so and that it failed to consider other means of ensuring that the decision reached him, namely by sending it abroad by

a registered letter or through the Swiss consular or diplomatic representations. He submits that the Court was acting arbitrarily and not in accordance with the principle of good faith. As a result, he could not file an appeal against the decision of the Administrative Court to the Federal Court and was thus denied access to court.

THE LAW

The applicant complains under Article 6 (Art. 6) of the Convention that, as the decision of the Administrative Court was not sent to his temporary address abroad, he was denied access to court as he could not file an appeal in time. He invokes Article 6 (Art. 6) of the Convention.

The Commission recalls that Article 6 para. 1 (Art. 6-1) secures to everyone the right of access to court. This right is, however, not absolute, but may be subject to limitations since by its very nature it calls for regulation by the State. Nonetheless the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (see Eur. Court H.R., Philis judgment of 27 August 1991, Series A no.209, p.20, para. 59). In the present case the decision to debar the applicant was subject to judicial review by the Administrative Court and the applicant addressed an appeal to this court. However, he not only failed to file a memorial within the time-limit fixed by the court but also did not take the necessary measures to ensure that judicial mail arriving at his office address in Geneva was received and forwarded to his temporary address abroad. The Commission notes the findings of the Federal Court that, as a lawyer practising in Geneva, the applicant was obliged to have a permanent office address in the Canton, and that the Administrative Court had to send its decision to that address. The Commission does not consider that this situation under domestic law was in any way incompatible with the applicant's right of access to court under Article 6 para. 1 (Art. 6-1) of the Convention.

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 by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber	Acting President of the Second Chamber
(K. ROGGE)	(H. DANELIUS)