AS TO THE ADMISSIBILITY OF

Application No. 17667/91
by Guy Jehl-Doberer
against Switzerland

The European Commission of Human Rights (First Chamber) sitting in private on 1 September 1993, the following members being present:

MM. A. WEITZEL, President
S. TRECHSEL
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mrs. J. LIDDY
Mr. M.P. PELLONPÄÄ

Mrs. M.F. BUQUICCHIO, 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 21 December 1990 by Guy Jehl-Doberer against Switzerland and registered on 14 January 1991 under file No. 17667/91;

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 French citizen born in 1939, is a translator residing in Basel. Before the Commission he is represented by Mr. R. Zweidler, a lawyer practising in Basel.

I.

Drinking water is fluoridated in Basel. The basis herefore is a decree of 1959 of the Greater Council (Grosser Rat) which is the legislative body of the Canton of Basel-Stadt. The decision, which aims at combating dental caries, states:

<Translation>

"The Greater Council of the Canton of Basel-Stadt approves, upon recommendation of its commission, for the installation of a fluoridation plant a credit of maximum 170'000 SFr at the State's expense.

At present the waterworks are reimbursed for operation and maintenance of the fluoridation installations to the amount of approximately 100,000.- SFr out of the general State budget.

The approval of the credit is tied to the following conditions:

1. Dosage. during the months of June, July and August: 0,8 mg/l; during the remaining nine months: 1 mg/l. During heat periods outside the three months mentioned the waterworks are empowered to reduce the dosage to 0,8 mg/l.

2. Technical control. The fluor content of the drinking water must be regularly controlled not only where fluor is added to the water, but also at different points of the water network.

3. Scientific assessment. In the coming years the consequences and results of water fluoridation must be compiled and scientifically examined by a competent body.

This decision must be published; it is subject to a referendum."

<German>

"Der Grosse Rat des Kantons Basel-Stadt, auf Antrag seiner Kommission, bewilligt für die Einrichtung der Fluoridierungsanlagen einen Kredit von maximal Fr. 170,000.- zu Lasten der allgemeinen Staatsrechnung.

Dem Wasserwerk wird der Aufwand für den Betrieb und Unterhalt der Fluoridierungsanlagen von zurzeit rund Fr. 100,000.- jährlich aus den allgemeinen Staatsmitteln vergütet.

Die Kreditbewilligung ist an folgende Auflagen gebunden:

1. Dosierung. Während der Monate Juni, Juli und August: 0,8 mg/l; während der übrigen 9 Monate: 1 mg/l. Das Wasserwerk wird ermächtigt, bei Hitzeperioden ausserhalb der erwähnten drei Sommermonate die Dosierung auf 0,8 mg/l zu senken.

2. Technische Kontrolle. Der Fluorgehalt des Trinkwassers ist nicht nur an den Fluorbeimischungsstellen, sondern auch an verschiedenen Punkten des Leitungsnetzes regelmässig zu kontrollieren.

3. Wissenschaftliche Auswertung. In den kommenden Jahren sind die Auswirkungen und Erfolge der Wasserfluoridierung durch ein entsprechendes Gremium zusammenzufassen und wissenschaftlich verwerten zu lassen.

Dieser Beschluss ist zu publizieren; er unterliegt dem Referendum."

II.

In 1987 the applicant wrote to the Basel Industrial Works, requesting fluoride-free drinking water free. The Industrial Works refused this on the ground that it was not its duty to adapt the quality of water to the wishes of individual consumers.

The applicant's complaint against this refusal was dismissed on 20 November 1987 by the Construction Department (Baudepartement), his subsequent appeal by the Council of State (Regierungsrat), and his further appeal by the Administrative Court (Verwaltungsgericht) of the Canton of Basel-Stadt.

The applicant's public law appeal (staatsrechtliche Beschwerde)

was dismissed by the Federal Court on 29 June 1990.

In its decision the Court noted that the measure complained of, the adding of natriumsilokofluoride to drinking water, was compulsory, constituting an interference with the applicant's constitutional right to personal liberty. It further found that the decree of the Greater Council of the Canton of Basel-Stadt constituted a law which had been published and sufficed as a legal basis for the measure complained of. The measure furthermore served public interest in that it prevented dental caries.

The Court further found that according to the present state of knowledge it could not clearly be said that the fluoridation of water was unsuitable to prevent caries; the experiences of the Canton of Basel-Stadt rather demonstrated the opposite. The Court continued:

<Translation>

> "It is true that the fluoridation of drinking water amounts to an interference with personal liberty. However, in relation to the intended aim - the protection of popular health through prevention of dental caries - the measure appears adequate and must be accepted by the individual citizen. ... Addition to the water is technically controlled, the consequences and results are supervised and scientifically examined. Furthermore, compared with the damaging consequences of other installations of the State (such as aeroplane and street noise, air pollution) which the citizen can equally not avoid, the fluoridation of drinking water does not constitute a particularly severe interference. The experiences gathered in Basel-Stadt since the introduction of the fluoridation of drinking water do not militate against continuation of the measure; rather, they let the measure appear proportionate and justified. "

<German>

> "Zwar stellt die Fluoridierung des Trinkwassers einen Eingriff in die persönliche Freiheit dar, doch erscheint sie im Verhältnis zum angestrebten Ziel - Schutz der Volksgesundheit durch Prophylaxe gegen die Zahnkaries - als angemessene Massnahmem, die vom einzelnen Bürger hinzunehmen ist. ... Die Beimischung wird technisch kontrolliert, die Auswirkungen und Erfolge werden überwacht und wissenschaftlich ausgewertet. Ausserdem handelt es sich bei der Trinkwasserfluoridierung im Vergleich zu den schädlichen Folgen öffentlicher, vom Staat getragener Werke (wie Flug- und Strassenverkehrslärm, Luftverschmutzung), denen der Bürger ebenfalls nicht auweichen kann, um einen nicht besonders schwerwiegenden Eingriff. Die seit der Einführung der Trinkwasserfluoridierung in Basel-Stadt gesammelten Erfahrungen sprechen nicht gegen die Weiterführung der Massnahme, sondern lassen diese als verhältnismässig und gerechtfertigt erscheinen."

COMPLAINTS

The applicant complains that the fluoridation of drinking water in Basel breaches his right to respect for his private life within the meaning of Article 8 of the Convention.

The applicant submits that the legal basis was not sufficiently accessible or precise. For instance, the decision of the Greater Council did not state that natriumsilokofluoride was actually added.

The applicant points out that the fluoridation of water cannot be compared with the adding of chloride which is a treatment intended to make it drinkable; rather, fluoridation is a "treatment" of the

citizen. The applicant submits that the adequacy of fluoridation is scientifically disputed; thus, there is a suspicion that, in the long term, it can cause damages such as Down's syndrome (Mongoloismus) and cancer. In the applicant's view the measure is unnecessary in view of various other alternatives, such as fluor tablets, the fluoridation of milk or salt, tooth paste etc.

The applicant recalls that Basel-Stadt is the only Swiss canton which fluoridates water. While according to statistics of 1987 water was also fluoridated in then Czechoslovakia (for 3,5 million persons), Finland (for 74'000 persons), Ireland (for 2,3 million persons) and the United Kingdom (for 5,5 million persons), it had been stopped in the Netherlands and in two Austrian Federal Provinces. The Federal Republic of Germany has also not introduced it.

The applicant submits that in view of the importance of the right at issue and the severity of the interference the measure appears unjustified.

THE LAW

The applicant complains that the fluoridation of drinking water in the Canton of Basel-Stadt amounts to a breach of his right to respect for private life as enshrined in Article 8 (Art. 8) of the Convention. This provision states:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission recalls its case-law according to which even minor medical treatment, as long as it is compulsory, constitutes an interference with a person's right to respect for private life, though the measure may be considered necessary in a democratic society where it serves the aim of the protection of health within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention (see No. 10435/83, dec. 10.12.84, D.R. 40 p. 251 with further references).

In the present case, it is true that in the Canton of Basel-Stadt fluoride is added to drinking water in order to prevent dental caries. However, in the Commission's opinion, this situation differs from that of compulsory medical treatment. Thus, in the Canton of Basel-Stadt drinking water is provided as a general service to the population.

The question arises therefore whether there has at all been an interference with the applicant's rights under Article 8 (Art. 8) of the Convention.

The Commission need nevertheless not examine this issue since any interference with the applicant's rights would in any event be justified within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

The Commission considers that the legal basis for the measure complained of was a decree enacted in 1959 of the Greater Council which is the legislative body of the Canton of Basel-Stadt. The Commission notes the Federal Court's decision of 29 June 1990 according to which the decree at issue constitutes a law. The Commission further considers that the terms of this decree, which was published, were

sufficiently precise and accessible for the applicant. Insofar as the applicant submits that it does not transpire from the decree that natriumsilikofluoride is added, he has not shown that the latter is not merely a different form of, but in fact differs in substance from, what is generally understood, and was in fact understood by the Federal Court, as being fluoride.

The measure complained of would therefore have been "in accordance with the law" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

The Commission further accepts that the fluoridation of drinking water aims at preventing dental caries and serves "the protection of health" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

Finally, the Commission recalls that the requirement that an interference must be "necessary in a democratic society" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention implies that the interference corresponds to a pressing social need and that it is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society" the Convention organs must also take into account that a margin of appreciation is left to the Contracting States (see Eur. Court H.R., Olsson judgment of 24 March 1988, Series A no. 130, p. 31 et seq., para. 67). Indeed, a measure for the protection of health may still be considered "necessary in a democratic society" within the meaning of Article 8 (Art. 8) of the Convention even if it is no longer employed by other European States (see No. 10435/83, loc. cit.).

It is true that in the applicant's submissions the Canton of Basel-Stadt is the only Canton in Switzerland which fluorides water, and that the Federal Republic of Germany, the Netherlands and other countries also refrain from the measure. On the other hand, the applicant himself has pointed out various European States in which fluoride is added to water.

The Commission further observes that the national authorities, namely the Federal Court in its decision of 29 June 1990, carefully weighed the competing interests at stake. Thus, the Federal Court considered that the measure was not particularly severe and appeared adequate in relation to the intended aim, which is to protect popular health. The Federal Court found in particular that it was not scientifically established that the fluoridation of water was unsuitable to prevent dental caries and that the experiences of the Canton of Basel-Stadt demonstrated the opposite. Insofar as the applicant suspects that fluoridation may in the long term have detrimental consequences, the Commission, as the Federal Court before it, attaches particular importance to para. 3 of the Decree of 1959 according to which the consequences and results of the fluoridation of drinking water are supervised and scientifically examined.

It cannot therefore be said that the decision of the Swiss authorities went beyond the margin of appreciation left to the national authorities.

Thus, even assuming that there had been an interference with the applicant's rights under Article 8 para. 1 (Art. 8-1) of the Convention, the interference with the applicant's right to respect for private life could nevertheless reasonably be considered "necessary in a democratic society".

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 First Chamber | President of the First Chamber

(M.F. BUQUICCHIO) | (A. WEITZEL)