AS TO THE ADMISSIBILITY OF

Application No. 20580/92
by K.B.
against the Federal Republic of Germany

The European Commission of Human Rights (First Chamber) sitting in private on 8 September 1992, the following members being present:

MM. F. ERMACORA, Acting President of the First Chamber
J.A. FROWEIN
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER

Mr. M. de SALVIA, Secretary to the First 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 18 January 1991 by K.B. against the Federal Republic of Germany and registered on 4 September 1992 under file No. 20580/92;

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 they have been submitted by the applicant, may be summarised as follows.

The applicant, born in 1936, is a German national and resident in Munich. He is an engineer by profession.

His application No. 15720/89 concerning the length of the labour court proceedings which are set out below was declared admissible on 9 December 1991. In his present application the applicant complains about the alleged lack of impartiality of judges involved in these proceedings.

In 1979 a dispute arose between the applicant and his employer, a company producing motors and turbines, concerning the compensation due for the invention of a steering mechanism patented in the Federal Republic of Germany, Italy and the United Kingdom.

Following unsuccessful proceedings before the Arbitration Committee (Schiedsstelle) of the German Patent Office (Patentamt) under the Employees' Invention Act (Arbeitnehmererfindungsgesetz), the applicant, represented by counsel, filed an action for compensation with the Munich I Regional Court (Landgericht). He requested the Court to fix the appropriate amount of compensation which he considered

should be DM 1.8 million minimum and DM 3 million maximum.

On 13 March 1984 the Regional Court, having heard the parties and taken expert evidence, ordered the defendant company to pay the applicant DM 1,381,403 with interest. It also declared that the defendant was obliged to pay compensation for the future use of the applicant's invention. The remainder of the applicant's action, which had been amended several times and in particular increased to a compensation claim of some DM 18 million with interest, was dismissed.

In April 1984 both parties lodged appeals (Berufungen) with the Munich Court of Appeal (Oberlandesgericht).

On 22 May 1984 the 6th Chamber of the Court of Appeal fixed a hearing for 7 March 1985. In May and June 1984 the parties filed the reasons for their respective appeals, and they made further submissions in the period between November 1984 and February 1985.

On 12 February 1985 the Deputy of the Presiding Judge declared himself biased. On 27 February 1985 the Court of Appeal accepted his declaration.

The Court of Appeal held a hearing on 7 March 1985. On 25 March 1985 it inquired with the parties whether or not, having regard to the increasing procedural costs and the constitutional complaint (Verfassungsbeschwerde) envisaged by the defendant, the proceedings should be continued. The parties subsequently informed the Court that they wished to continue the proceedings.

At a hearing on 23 May 1985 the Court of Appeal ordered that expert evidence be taken as regards the parties' submissions upon appeal. However, due to various difficulties, no expert opinion was prepared.

On 21 January 1987 the Court of Appeal proposed a settlement of the case on the basis of DM 1.5 million. If the parties should not agree, further extensive evidence would have to be taken.

At the next hearing on 14 May 1987 the Court's proposal for a settlement was not accepted by the parties.

On 25 June 1987 the Court of Appeal ordered that further expert evidence be taken. The expert concerned delivered his opinion in November 1987. Until 1 July 1988 the applicant three times unsuccessfully challenged the expert F. for bias.

On 22 September 1988 the Court of Appeal ordered another expert opinion and invited the parties to propose an expert to be appointed. The parties apparently agreed on two possible experts.

On 29 November 1988 the Court of Appeal proposed a settlement of the case on the basis of the payments made by the defendant so far, i.e. about DM 1.5 million.

On 6 February 1989 the Court of Appeal informed the parties that another expert, namely Dr. S., had been asked to deliver the expert opinion. The applicant objected to the appointment of Dr. S. and challenged the judges of the 6th Chamber for bias. His motion was dismissed by the 29th Chamber at the Court of Appeal on 22 March 1989.

On 6 April 1989 the applicant challenged the judges of the 6th and 29th Chamber for bias. His motions were dismissed in May 1989.

On 7 June 1989 the Court of Appeal appointed Prof. M., one of the two experts agreed by the parties. Prof. M. refused to deliver an opinion.

On 11 July 1989 the Federal Constitutional Court (Bundesverfassungsgericht) refused to admit the applicant's constitutional complaint. The Constitutional Court considered in particular the length of the proceedings concerned and found that for the time being the conduct of the proceedings by the Court of Appeal could not be objected to. In particular the late statement of the Presiding Judge's Deputy about his being biased had not resulted in any delays. The length of the proceedings was essentially due to the fact that the Court of Appeal considered extensive taking of evidence necessary, which did not appear arbitrary. The taking of evidence in successive steps could not be objected to on the ground that the necessity of further evidence in some respects depended upon the outcome of an earlier taking of evidence. Moreover, the renewed recourse to expert evidence could not be objected to. The delays in taking the expert evidence could not be avoided, or were partly caused by the conduct of the parties.

On 18 August 1989 the Munich Court of Appeal again appointed Dr. S. as expert. Thereupon, the applicant again challenged the judges of the 6th Chamber for bias, objected to the appointment of Dr. S. and challenged him for bias. His motions were dismissed in October and November 1989, respectively.

At a hearing on 4 May 1990 the applicant and the defendant company entered into a settlement of the dispute, which provided in particular for a payment of DM 1.8 million in view of the applicant's compensation claim and the termination of his employment.

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention about the alleged lack of impartiality of the Judges at the Munich Court of Appeal. He criticises the conduct of the proceedings in general. He submits that the Court of Appeal had planned a total length of the appeal proceedings of eighteen to twenty years and, moreover, decided to repeat the taking of evidence. The Munich Court of Appeal thus forced him to accept the settlement of 4 May 1990.

THE LAW

The applicant considers that his compensation claim against his former employer was not determined by an impartial court within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission observes that it has already examined the conduct of the proceedings by, inter alia, the Munich Court of Appeal, in Application No. 15720/89 as regards the applicant's complaint under Article 6 para. 1 (Art. 6-1) about the length of these proceedings. This application was declared admissible on 9 December 1991.

On 18 January 1991, following information about the Commission's decision to communicate his complaint about the length of the said proceedings, the applicant told the Commission about the settlement between him and the defendant. He also lodged his complaints under Article 6 para. 1 (Art. 6-1) about how this settlement was reached.

The Commission considers that the applicant's submissions do not, in addition to the length issue, disclose any appearance of a violation of his rights under Article 6 para. 1 (Art. 6-1), in particular of his right to an impartial tribunal.

The Commission, taking into account the settlement reached between the applicant and his employer, observes that at the domestic level the applicant did not take any legal action as regards his allegation that he had been arbitrarily forced by the Munich Court of

Appeal to agree to the said settlement which terminated the court proceedings.

The Commission notes that one Judge declared himself biased in February 1985 at an early stage of the appeal proceedings before the Munich Court of Appeal.

Furthermore, the Commission finds that the applicant failed to show that any other Judge or the whole Court deciding upon his case at the Munich Court of Appeal were biased for personal reasons, or that there were ascertainable facts which could raise doubts as to their impartiality (cf. Eur. Court H.R., Hauschildt judgment of 24 May 1989, Series A no. 154, p. 21, paras. 46-48). The conduct of the proceedings as such, especially the taking of evidence or the efforts to reach a settlement between the applicant and the defendant, do not show that the Judges concerned acted not impartially. In a procedure in which highly complicated technical details concerning an invention for jet engines and its actual use are at issue it cannot be seen as arbitrary if a court decides to take extensive expert evidence.

It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Accordingly, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber Acting President of the First Chamber

(M. de SALVIA) (F. ERMACORA)