AS TO THE ADMISSIBILITY OF

Application No. 25053/94
by Uwe KLÖPPER
against Switzerland

The European Commission of Human Rights (First Chamber) sitting in private on 18 January 1996, the following members being present:

MM. C.L. ROZAKIS, President
S. TRECHSEL
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

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 6 April 1994 by Uwe Klöpper against Switzerland and registered on 1 September 1994 under file No. 25053/94;

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 German citizen born in 1942, is an industrial specialist residing at Fräschels in Switzerland.

Particular circumstances of the case

The applicant, who is married to a Swiss citizen, has no authorisation to take up employment and takes care of their two children. His wife is working in the bank.

According to the income declaration (Lohnausweis) of the applicant's wife, she paid in 1993 altogether 6'670 CHF as contributions for the Old Age and Survivors' Insurance (Alters- und Hinterlassenenversicherung). Her pay slip for the month of October 1994 states that she paid 353.40 CHF as social insurance contribution.

Relevant domestic law

Section 4 para. 2 of the Swiss Federal Constitution (Bundesver-

fassung) provides that "man and woman are equal; the law shall ensure their equality, in particular in family, education and labour ..." ("Mann und Frau sind gleichberechtigt. Das Gesetz sorgt für ihre Gleichsstellung in Familie, Ausbildung und Arbeit ...").

According to Section 113 para. 3 of the Federal Constitution, "the statutes ... enacted by Federal Parliament ... are binding for the Federal Court" ("die von der bundesversammlung erlassenen Gesetze (sind) für das Bundesgericht massgebend").

Section 3 of the Federal Old Age and Survivors' Insurance Act (Bundesgesetz über die Alters- und Hinterlassenenversicherung) determines those persons who are obliged to pay insurance contributions (beitragspflichtig). Para. 2 b) states:

<Translation>

"2. There shall be no obligation to pay contributions for:

...

b. wives of insured persons who are not gainfully employed, and wives who collaborate in the husband's enterprise to the extent that they have no salary."

<German>

"2. Von der Beitragspflicht sind befreit:

...

b. die nichterwerbstätigen Ehefrauen von Versicherten sowie im Betriebe des Ehemannes mitarbeitenden Ehefrauen, soweit sie keinen Barlohn beziehen."

COMPLAINTS

The applicant complains under Article 5 of Protocol No. 7 that the Federal Old Age and Survivors' Insurance Act discriminates between families in which only the husband works and families in which only the wife works, as in the latter case both husband and wife have to pay contributions to the Social Insurance. Thus, his wife has to pay higher contributions than a man who is earning the same salary.

The applicant submits that there is no remedy in Switzerland to complain about the Federal Old Age and Survivors' Insurance Act.

The applicant also points out that the right to an orphans' pension only falls to children whose deceased parent is the father.

THE LAW

1. The applicant complains under Article 5 of Protocol No. 7 (P7-() of unequal treatment in that his wife is obliged to pay insurance contributions for him as a house husband, whereas no contributions are due in the case of a housewife.

2. The Commission need not examine whether the applicant has complied with the requirements under Article 26 (Art. 26) of the Convention since the application is in any event inadmissible for the following reasons.

3. Article 5 of Protocol No. 7 (P7-5) of the Convention states, insofar as relevant:

"Spouses shall enjoy equality of rights and responsibilities of a private law character between them ... during marriage ..."

The Commission notes that the issue in the present case is the exemption from the obligation to pay social insurance contributions. It is true that the Convention organs have considered social-security disputes as involving the determination of a "civil right" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention, while distinguishing them from private-law disputes in the traditional sense (see Eur. Court H.R., Deumeland v. Germany judgment of 29 May 1986, Series A no. 100, p. 22, para. 60; Schuler-Zgraggen v. Switzerland judgment of 24 June 1993, Series A no. 263, p. 17, para. 46).

In the Commission's opinion, however, it cannot be concluded that as a result of the above interpretation the "rights and responsibilities" at issue were of a "private law character" within the meaning of Article 5 of Protocol No. 7 (P7-5).

The Commission finds a confirmation herefor in the explanatory report to Protocol No. 7 (P7) to the Convention according to which Article 5 (Art. 5) does not apply to other fields of law, such as administrative, fiscal, social or labour laws.

This part of the application is, therefore, incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The Commission has next examined whether there has been discrimination contrary to Article 14 (Art. 14) of the Convention which states:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

According to the Convention organs' case-law, Article 14 (Art. 14) of the Convention complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 (Art. 14) does not necessarily presuppose a breach of those provisions - and to this extent it is autonomous -, there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see Eur. Court H.R., Abulaziz and others v. the United Kingdom judgment of 28 May 1985, Series A no. 94, p. 35, para. 71).

The Commission has therefore considered whether the facts at issue fall within the ambit of any other provision of the Convention or its Protocols.

As Switzerland has not ratified Protocol No. 1, the Commission must not examine whether the facts at issue fall within the ambit of Article 1 of Protocol No. 1 (P1-1) of the Convention which enshrines the right to the peaceful enjoyment of possessions.

Next, the Commission has had regard to Article 8 (Art. 8) of the Convention which states, insofar as relevant:

> "1. Everyone has the right to respect for his private and family life ...
>
> 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."

In the Commission's opinion, however, the applicant has not shown that the obligation to pay insurance contributions hindered him in the enjoyment of, or in any other way affected, his right to respect for family life.

The remainder of 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.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)