AS TO THE ADMISSIBILITY OF

Application No. 30564/96
by L. W. A.
against Switzerland

The European Commission of Human Rights (First Chamber) sitting in private on 26 February 1997, the following members being present:

Mrs. J. LIDDY, President
MM. S. TRECHSEL
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

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 5 March 1996 by L. W. A. against Switzerland and registered on 25 March 1996 under file No. 30564/96;

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 applicant, a Canadian citizen born in 1943, is a businessman residing at Tuggen in Switzerland. Before the Commission he is represented by Mr Schmidhäusler, a lawyer residing in Lachen in Switzerland.

The facts of the case, as submitted by the applicant, may be summarised as follows.

In 1986 the applicant was remanded in custody in Berlin. In 1987 the Berlin Regional Court (Landgericht) sentenced him to 33 months' imprisonment on the grounds of credit fraud and disloyal conduct (Kreditbetrug und Untreue).

At the relevant time, the applicant was a member of the board of the Swiss company Südtreuhand AG where he had the power to sign. Immediately after his arrest in 1986 he authorised his wife to withdraw 300'000 Swiss Francs (CHF) from a bank account in Switzerland belonging to the Südtreuhand AG.

The applicant was charged in Switzerland with the offence of embezzlement (Veruntreuung) in that he had enriched himself by using part of the amount withdrawn for the court proceedings in Germany.

In the ensuing proceedings before the Criminal Court (Strafgericht) of the Canton of Schwyz, the applicant claimed that he had paid the business expenses of another company, the Südbau AG (later called Crédit Sud). Thus, the Südtreuhand AG owed the Südbau AG 3 million CHF. The applicant had placed the 300'000 CHF at issue with the ready cash (Kassa) of the Südbau AG which was kept at his home. The applicant had instructed his wife to pay, from this amount, lawyers' and telephone bills in the interests of the Südbau AG as well as clients' debts. The remainder of the money had been handed out to him, the applicant, upon his return to Switzerland in 1987.

The applicant's wife stated that she had paid company lawyers; she had transferred a certain sum to Berlin where, she believed, the money served to pay lawyers working for the Südtreuhand AG.

Another witness, D.G., stated before the Criminal Court that the applicant's wife had told him that the money belonged to the applicant and was needed for the court proceedings in Germany.

At the trial the Criminal Court decided not to order the preparation of an expert opinion concerning the withdrawal of the 300'000 CHF concerned. In the Court's view, a short opinion would serve no purpose, and an extensive opinion would be disproportionate and unnecessary since the applicant's wife had already made extensive statements before the Court.

On 28 January 1994 the Criminal Court of the Canton of Schwyz convicted the applicant of embezzlement in respect of the amount of 170'000 CHF, while refraining from imposing an additional sentence to that imposed by the Berlin Regional Court. In its decision the Court relied on the statements of the applicant, his wife and D.G. and on the fact that the applicant had not been able to substantiate that he had not employed the money for his own purposes. In this regard it considered the various receipts which the applicant had submitted in respect of his expenses.

The applicant filed an appeal (Berufung) with the Schwyz Cantonal Court (Kantonsgericht) in which he also requested the hearing of certain witnesses and the preparation of an expert opinion which would determine the amounts owed by the Südtreuhand AG to the Südbau AG. The applicant later also submitted a letter from Crédit Sud (formerly Südbau AG) dated 6 March 1995 which stated:

<Translation>

> "The accused was expressly authorised by our company freely to spend the 300'000 CHF forming part of the assets of our society for the defence of the criminal proceedings personally directed against him abroad."

<German>

> "Der Beschuldigte war von unserer Gesellschaft ausdrücklich autorisiert, die zum Vermögen unserer Gesellschaft gehörenden CHF 300'000 beliebig für die Verteidigung des gegen ihn persönlich gerichteten Strafverfahrens im Ausland einzusetzen."

On 7 March 1995 the Cantonal Court confirmed the judgment of the Criminal Court while imposing three months' imprisonment in addition to the sentence imposed by the Berlin Regional Court. In its decision the Court found that, of the 300'000 CHF withdrawn, 130'000 CHF could be regarded as having been spent for the company. On the other hand, the applicant had not been able to substantiate that he had used the remaining 170'000 CHF for the company; the receipts presented were

unclear in this respect. For instance, the applicant's medical insurance bills, or legal costs in proceedings against the Südtreuhand AG, could not be considered as company expenses. Moreover, D.G. had testified that the applicant's wife had told him that the money was to be used for the applicant's defence in Berlin.

The applicant filed a public law appeal (staatsrechtliche Beschwerde) with the Federal Court (Bundesgericht) in which he referred, inter alia, to the letter from Crédit Sud of 6 March 1995.

On 18 July 1995 the Federal Court dismissed the applicant's public law appeal, the decision being served on 6 September 1995.

In its decision, the Federal Court dealt, inter alia, with the applicant's complaint that the Cantonal Court had not ordered the preparation of an expert opinion as to the claims of the Südbau AG against the Südtreuhand AG, and that certain persons of the Südbau AG had not been heard as witnesses. The Federal Court stated, with reference to the judgment of the Cantonal Court:

<Translation>

> "the existence of a claim of the Südbau AG would only be of relevance if the applicant had used the money withdrawn in the interest of this company. At least part thereof, however, he used for private purposes ... The Cantonal Court could therefore refuse the preparation of an expert opinion as well as the hearing of the liquidators of Crédit Sud, as these two elements of evidence were not important for the conviction."

<German>

> "das Bestehen einer Forderung der Südbau AG (wäre) nur dann von Bedeutung ..., wenn der Beschwerdeführer das abgehobene Geld im Interesse dieser Gesellschaft verwendet hätte. Zumindest einen Teil davon habe er jedoch für private Zwecke verwendet ... Das Kantonsgericht konnte demnach sowohl auf die Anordnung eines Gutachtens wie auch auf die Einvernahme der Liquidatoren der Crédit Sud AG verzichten, da diese beiden Beweise für die Verurteilung nicht erheblich waren."

COMPLAINTS

The applicant complains under Article 6 paras. 1 and 3 (d) of the Convention that the courts refused his request for the preparation of an expert opinion to demonstrate that the Südbau AG had a credit balance vis-à-vis the Südtreuhand AG.

Also under Article 6 paras. 1 and 3 (d) of the Convention the applicant complains that the courts did not consider evidence which he submitted, in particular the letter of 6 March 1995 from Crédit Sud, according to which he was entitled to spend 300'000 CHF as he wished. The applicant submits that if the courts doubted the contents of this letter, they should have heard the relevant witnesses.

Under Article 6 paras. 1 and 2 of the Convention the applicant complains of the manner in which the courts considered that he had not used the money for the Südbau AG.

Finally, the applicant complains under Article 6 paras. 1 and 3 (d) of the Convention that the courts did not examine his argument according to which the money for his defence costs came from the sale of his house and not from the money withdrawn from the Südbau AG.

THE LAW

The applicant raises various complaints about the criminal

proceedings in which he was involved. He relies on Article 6 paras. 1, 2 and 3 (d) (Art. 6-1, 6-2, 6-3-d) of the Convention which state, insofar as relevant:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights: ...
>
> d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ..."

Insofar as the applicant may be understood as complaining of the outcome of the proceedings, 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).

It is true that the applicant also complains of the unfairness of the proceedings. He complains in particular that the domestic courts refused his request for the preparation of an expert opinion to demonstrate that the Südbau AG had a credit balance. Moreover, the courts disregarded evidence which he submitted, in particular the letter of 6 March 1995 from Crédit Sud, according to which he was entitled to spend 300'000 CHF as he wished. The applicant also complains of the manner in which the courts considered that the applicant had not used the money for the Südbau AG.

The Commission recalls the Convention organs' case-law that, as a general rule, it is for the national courts to assess the 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 Eur. Court HR, Asch v. Austria judgment of 26 April 1991, Series A no. 203, p. 10, para. 26; Klaas v. Germany judgment of 22 September 1993, Series A no. 269, p. 17, para. 29).

In the present case, the Commission sees no indication that the applicant could not put forward his point of view or that the proceedings were otherwise unfairly conducted. Thus, the domestic courts examined the relevant evidence. They relied in particular on statements of the applicant, his wife and the witness D.G., who related a conversation with the applicant's wife. They also considered the various receipts which the applicant had submitted in respect of his expenses and found, for instance, that the applicant's medical insurance bills could not be considered as company expenses. It was also considered that an expert opinion was unnecessary in view of the other evidence available.

Insofar as the applicant complains that the Courts did not consider the letter from Crédit Sud of 6 March 1995, the Commission notes the Federal Court's decision of 18 July 1995 according to which the hearing of witnesses of Crédit Sud was unnecessary as, even if the former Südbau AG had had claims against the Südtreuhand AG, this would only be relevant if the applicant had used the money in the interest of the company; however, at least part thereof he had used for private

purposes.

Finally, the applicant complains that the courts did not examine his argument according to which he had sold a house for which reason he could afford to pay his defence costs.

It is true that Article 6 para. 1 (Art. 6-1) of the Convention obliges the courts to give reasons for their judgments. However, this provision cannot be understood as requiring a detailed answer to every argument. Nor are the Convention organs called upon to examine whether arguments have been adequately met (see Eur. Court HR, Van de Hurk v. Netherlands judgment of 19 April 1994, Series A no. 288, p. 20, para. 61; Ruiz Torija v. Spain judgment of 9 December 1994, Series A no. 303-A, p. 12, para. 29).

In the present case, however, the Commission considers that the courts gave sufficient reasons to explain why the conditions of embezzlement had been met in the applicant's case, for which reason it does not appear unfair that they regarded it unnecessary to examine further whether the applicant had other financial sources at his disposal.

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.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber