AS TO THE ADMISSIBILITY OF

Application No. 23777/94
by Daniel LORETZ
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 28 June 1995, the following members being present:

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

Ms. M.-T. SCHOEPFER, 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 9 February 1994 by Daniel Loretz against Switzerland and registered on 30 March 1994 under file No. 23777/94;

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, as submitted by the applicant, may be summarised as follows.

In 1982 the applicant fell and injured his shoulders whereupon he was afforded the required insurance benefits by SUVA, the Swiss Foundation for the Insurance of Accidents. As a result of a car accident in 1984, and following further examinations by various medical specialists, he was awarded invalidity pensions by his former employer and the Swiss Invalidity Insurance.

In 1989, the applicant applied to SUVA for an invalidity pension. He submitted a medical report according to which 40 % of his incapacity to work resulted from the accident in 1984.

Thereupon SUVA ordered the medical specialist Dr. S. of the SUVA accident department to undertake an examination of the applicant. Based on the resulting medical opinion of 14 February 1990, SUVA refused an invalidity pension as the accidents of 1982 and 1984 had not substantially reduced the applicant's capacity to work (Erwerbsfähigkeit); the headaches complained of stemmed from other sources and the applicant could be expected to undertake fulltime office work.

Upon the applicant's objection, SUVA confirmed its decision on 7 June 1991.

The applicant's appeal was dismissed on 19 May 1992 by the Zurich Insurance Court (Versicherungsgericht).

The applicant filed an administrative law appeal (Verwaltungs-gerichtsbeschwerde) with the Federal Insurance Court (Eidgenössisches Versicherungsgericht), complaining inter alia that the medical opinion of Dr. S., which was the sole basis for the decision of the previous court, had been the expert opinion of one party, i.e. SUVA. Such statements of a party to the proceedings could in no case serve as evidence.

On 20 October 1993 the Federal Insurance Court dismissed his appeal. In its decision, the Court considered altogether 16 reports of ten doctors, among them the opinion of Dr. S. of 14 February 1990, as well as the conclusions of four scientific publications. The Court concluded that the conclusion of Dr. S. enjoyed a broad scientific basis (wissenschaftlich breit abgestützt), and that it could not be established that the accidents of 1982 and 1984 had brought about the applicant's incapacity to work.

COMPLAINTS

The applicant complains that the medical opinion of Dr. S., on which the Federal Insurance Court relied, was that of a party to the proceedings. SUVA thus adjudged its own case. Hence, the Federal Insurance Court was not an independent and impartial tribunal within the meaning of Article 6 para. 1 of the Convention.

THE LAW

The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that the Federal Insurance Court relied on the medical opinion of Dr. S. which was in fact the expert opinion of a party to the proceedings.

Article 6 para. 1 (Art. 6-1) states, insofar as relevant:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal".

The Commission recalls that the mere fact that experts are employed by the administrative authority which also decides on the merits of a case does not in itself justify fears that the experts were unable to act with proper neutrality. To hold otherwise would often place unacceptable limits on the possibility to obtain expert advice (see Zumtobel v. Austria, Comm. Report 30.6.92, Eur. Court H.R., Series A no. 268-A, para. 86; Eur. Court H.R., Brandstetter judgment of 28 August 1991, Series A no. 211, p. 21, para. 44).

In the present case the Commission notes that the decision of SUVA of 7 June 1991 was based on the expert opinion of Dr. S. However, upon appeal this decision was examined and upheld by the Zurich Administrative Court and, upon a further administrative law appeal, by the Federal Insurance Court.

In these proceedings, the applicant was free to submit his own private expert opinions. Moreover, it transpires from the Federal Insurance Court's decision of 20 October 1993 that the Court felt free to review the medical opinion submitted by Dr. S. Thus the Court considered altogether 16 reports of ten doctors, among them the opinion of Dr. S., as well as four scientific publications. As a result, the Court concluded that Dr. S.'s opinion enjoyed a broad scientific basis.

Accordingly, the Commission considers that the position of the expert Dr. S. did not impair the applicant's right to a fair hearing

within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

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 Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)