AS TO THE ADMISSIBILITY OF

Application Nos. 24101/94 and 24440/94
by Josef MÜLLER
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 17 May 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 27 April 1994 by Josef MÜLLER against Switzerland and registered on 6 May 1994 under file No. 24101/94, and having regard to the application introduced on 8 June 1994 by Josef MÜLLER against Switzerland and registered on 20 June 1994 under file No. 24440/94;

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 applicant is a Swiss citizen born in 1924. He is a businessman and resides in Zurich.

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

The particular circumstances of the case

Between 23 August and 22 October 1993 the applicant introduced four public law appeals (staatsrechtliche Beschwerden) with the Federal Court (Bundesgericht). He complained of the decisions of the Canton of Zurich Court of Appeal (Obergericht) and Court of Cassation (Kassationsgericht) in the following sets of proceedings.

a) In the first set of proceedings the applicant and his company sued a newspaper for publishing defamatory information about them. On 10 March 1993 the Court of Appeal confirmed the decision of the Zurich District Court (Bezirksgericht) in this matter. The applicant and his company introduced a plea of nullity (Nichtigkeitsbeschwerde) with the Canton of Zurich Court of Cassation in respect of the Court of Appeal decision. On 17 June 1993 the Court of Cassation rejected the applicant's request for exclusion of judges and invited him to pay a

sum of money as security for the proceedings.

b) The second set of proceedings concerned the decision of the Meilen District Court by which a final warrant (definitive Rechtsöffnung) for enforcement of the applicant's debts (15,800 SFr) was granted. On 2 July 1993 the Canton of Zurich Court of Appeal dismissed the applicant's plea of nullity in respect of the aforesaid decision.

c) The third set of proceedings concerned the decision of the Zurich District Court by which a final warrant for enforcement of debts (650 SFr) of the applicant's limited company was granted. On 2 September 1993 the Canton of Zurich Court of Appeal dismissed a plea of nullity in respect of the District Court's judgment. The Court of Appeal further declared inadmissible the applicant's challenge of the Court of Appeal judges.

d) In the fourth set of proceedings the Meilen District Court granted a final warrant for enforcement of the applicant's debts (55,509 SFr). On 30 August 1993 the Canton of Zurich Court of Appeal declared inadmissible the applicant's plea of nullity in respect of the aforesaid decision.

In his four public law appeals against the above decisions the applicant alleged, in particular, that he was deprived of a fair and public hearing by an impartial tribunal within the meaning of Article 6 para. 1 of the Convention.

Upon the order of the President of the Civil Law Chamber II (Zivilabteilung) the applicant or his company were invited to pay, in each of the proceedings, advance court fees of 4,500 SFr. The applicant was informed that if he failed to pay the fees within the time-limit, the appeals would be declared inadmissible (auf die Rechtsvorkehr wird nicht eingetreten). The applicant's requests for interim measures in each of the proceedings were rejected on the ground that the public law appeals lacked prospects of success.

On the day of expiry of each time-limit the applicant informed the Federal Court that he considered the amount of the advance court fees disproportionate and unlawful. He requested their determination by an independent chamber and claimed that, should his requests for lower advance court fees be rejected, he wished to maintain the appeals in order to exhaust domestic remedies. In the applicant's opinion his cases should then be struck off the list of cases and no formal judgment should be delivered.

The applicant alleged that the President of the Civil Law Chamber II was biased as he had held, when deciding on the requests for interim measures and on the advance court fees, that the public law appeals lacked prospects of success. Moreover, he had allegedly participated in the delivery of unlawful decisions against the applicant and his limited company in the past. The applicant therefore requested his exclusion.

By four judgments delivered on 20 October and 23 November 1993, the Federal Court, consisting of the President of the Civil Law Chamber II and two other judges, declared the public law appeals inadmissible pursuant to Section 150 para. 4 of the Federal Judiciary Act (Bundesgesetz über die Organisation der Bundesrechtspflege).

The applicant was charged court fees of 3,000 SFr in respect of the proceedings concerning the Court of Appeal's decision of 30 August 1993 (see (d) above) and court fees of 1,000 SFr were imposed in respect of each of the other proceedings. Pursuant to Section 31 para. 2 of the Federal Judiciary Act, the applicant was fined 1,500 SFr in each of the proceedings.

The Federal Court held that, given the way the applicant had conducted the proceedings (in Anbetracht der Art und Weise der Prozessführung), the advance court fees imposed conformed with Section 153a para. 1 of the Federal Judiciary Act and that the requests for their reduction were to be considered as abusive (missbräuchlich).

Furthermore, in the proceedings concerning the Court of Appeal's decisions of 30 August and 2 September 1993, the Federal Court declared the applicant's requests for the exclusion of the President of the Civil Law Chamber II inadmissible.

The relevant domestic law

According to Section 31 para. 2 of the Federal Judiciary Act both the party and its representative may be punished by means of a disciplinary fine of up to 600 SFr and if the offence is repeated up to 1,500 SFr for malicious or wanton conduct of the proceedings (böswillige oder mutwillige Prozessführung).

By Section 150 para. 1 of the Federal Judiciary Act, a person who calls upon the Federal Court in civil cases must, upon order of the President, provide a security for the probable court fees. According to para. 4 of the same Section, if the security is not provided within the time-limit, the claim shall be declared inadmissible.

Pursuant to Section 153 para. 2 of the Federal Judiciary Act, the Federal Court can dispense with the court fees entirely or partially if a case is settled by waiver (Abstandserklärung) or if it is terminated by a friendly settlement (Vergleich).

Pursuant to Section 153a para. 1 of the Federal Judiciary Act, the fees for the proceedings are to be determined according to the value, the volume and the complexity of the subject-matter, the way the proceedings have been conducted and the financial situation of the participants. Para. 2 (b) of the same Section provides for fees of between 200 and 5,000 SFr in case of public law appeals which do not involve pecuniary interests. The scale of fees supplementing Section 153a of the Federal Judiciary Act provides for the following fees in cases where the Federal Court does not decide as the only court:

Value of the subject-matter (SFr)	Court fees (SFr)
0 - 10,000	200 - 5,000
10,000 - 20,000	500 - 5,000
20,000 - 50,000	1,000 - 5,000
50,000 - 100,000	1,500 - 5,000

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention that his right to a fair and public hearing by an impartial tribunal was violated in the proceedings leading to the Federal Court judgments of respectively 20 October and 23 November 1993 in that:

a) he was charged disproportionately high advance court fees;

b) in spite of the challenge for bias, the President of the Civil Law Chamber II participated in the delivery of the judgments;

c) the judgments were delivered despite the fact that he had deliberately waived his claims by failure to pay the advance court fees;

d) the court fees as well as the fines were of punitive character and their imposition was not preceded by a fair and public hearing;

e) there was no fair and public hearing by an impartial tribunal as

to his request for the exclusion of the President of the Civil Law Chamber II;

f) the judges in Switzerland lack impartiality because of their dependence on political parties.

The applicant further complains that the above judgments deprived him of an effective remedy before a national authority. He alleges a violation of Article 13 of the Convention.

Finally, the applicant alleges a violation of Article 14 of the Convention in that the Federal Court delivered judgments in his cases despite the fact that he had not paid the advance court fees. He considers that the judgments represented a punishment. He alleges that instead of delivering the judgments the Federal Court should have issued, like in cases brought by other applicants, orders striking off the appeals (Abschreibungsverfügungen) and charged him considerably lower fees.

THE LAW

1. The Commission, having regard to the similarity of the applications, considers it appropriate to join them under Rule 35 of its Rules of Procedure.

2. The applicant alleges a violation of Article 6 para. 1 (Art. 6-1) of the Convention, which provides, so far as relevant, as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law."

The Commission considers that the above proceedings introduced with the Federal Court aimed at the determination of the applicant's civil rights or obligations and that no issue arises as to the applicability of Article 6 para. 1 (Art. 6-1) of the Convention to these proceedings.

a) To the extent that the applicant complains of the imposition of disproportionately high advance court fees on him and of participation of a judge challenged for bias in the delivery of the Federal Court judgments, the Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention embodies the right to a court, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see Eur. Court H.R., Philis judgment of 27 August 1991, Series A no. 209, p. 20, para. 59).

However, Article 6 para. 1 (Art. 6-1) of the Convention does not debar Contracting States from making regulations, in the interests of the good administration of justice, concerning the access to courts (No. 6916/75, Dec. 8.10.76, D.R. 6 p. 107).

Furthermore, when the State regulates access to court, it must not restrict the access to such an extent that the very essence of the right is impaired and the limitation will not be compatible with Article 6 para. 1 (Art. 6-1) of the Convention if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, e.g., Eur. Court H.R., Fayed judgment of 21 September 1994, Series A no. 294-B, para. 65).

In the present case the applicant did not claim that he was indigent nor did he request legal aid or the waiver of court fees. The advance fees imposed on him (4,500 SFr in each of the proceedings) did not exceed the limits determined by domestic law (up to 5,000 SFr).

Furthermore, in these proceedings the Federal Court was not empowered to deal with the applicant's complaints with full jurisdiction, but it was to examine the public law appeals as to the breach of the applicant's constitutional rights. Finally, the Federal Court was not examining the complaints as the only court and the applicant was informed in advance that his public law appeals lacked prospects of success.

As to the complaint of alleged bias on the part of one of the judges who limited the applicant's access to court (by imposing a requirement that he pay advance court fees and by declaring his appeals inadmissible when he failed to do so), the Commission considers that clear evidence of bias on the part of the authority which limits access to court could well be a relevant consideration in determining whether a limitation is proportionate to the aim pursued.

In the applicant's cases, however, the reasons adduced for alleged bias of one of the judges (opinion that the public law appeals lacked prospects of success expressed when deciding on the request for interim measures; participation in previous proceedings brought by the applicant which concerned different subject-matters) were considered irrelevant by the Federal Court and the Commission does not find this decision arbitrary.

As to the complaint of alleged dependence of judges in Switzerland on political parties, the Commission observes that the applicant has not shown that the judges who participated in the proceedings complained of lacked impartiality because of their dependence on any political party.

In these circumstances, the Commission finds that the applicant has not substantiated his allegation of bias and that the regulation of his access to court (by imposition of advance court fees) was not contrary to Article 6 para. 1 (Art. 6-1) of the Convention.

b) The applicant further complains of the absence of a public hearing in his cases. The Commission recalls that the Federal Court did not determine the merits of the public law appeals as the applicant had failed to pay the advance court fees.

In this respect the Commission finds that the full substantive guarantees of Article 6 para. 1 (Art. 6-1) of the Convention - including the right to a public hearing - do not apply to proceedings by which, like in the present case, a person is denied access to court in a way compatible with the provisions of Article 6 para. 1 (Art. 6-1) of the Convention.

c) The applicant also complains that the Federal Court dealt with his cases after his failure to pay the court fees in advance. He alleges that the cases should have been struck off the list of cases and that no judgments should have been delivered. However, the Commission finds that this complaint does not raise an issue under Article 6 para. 1 (Art. 6-1) of the Convention.

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

3. The applicant further complains that the disciplinary fines of 1,500 SFr imposed on him pursuant to Section 31 para. 2 of the Federal Judiciary Act breached his rights under Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission has found earlier that a disciplinary fine imposed on the present applicant by virtue of Section 31 of the Federal Judiciary Act fell in principle outside the scope of Article 6 (Art. 6) of the Convention (cf. No. 21083/92, Dec. 12.10.94, with

further references; unpublished).

The Commission recalls that in application No. 21083/92 the fine complained of amounted to 500 SFr, whereas in the present case the fine equalled 1,500 SFr. In both cases the maximum fine provided for by thelaw then in force was imposed on the applicant. As in application No. 21083/92, the Commission finds that in the present case the disciplinary fine did not bring the matter within the criminal sphere.

It follows that this part of the application is incompatible ratione materiae with the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant further alleges a violation of Article 13 (Art. 13) of the Convention in that the above four Federal Court judgments deprived him of an effective remedy before a national authority.

However, the guarantees of Article 13 (Art. 13) apply only to a grievance which can be regarded as "arguable" (cf. Eur. Court H.R., Powell and Rayner judgment of 21 February 1990, Series A no. 172 p. 14 para. 31, with further references). In the present case the Commission has rejected the substantive claims either as disclosing no appearance of a violation of the Convention or as being incompatible ratione materiae with the Convention. For similar reasons, they cannot be regarded as "arguable".

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

5. Finally, the applicant alleges a violation of Article 14 (Art. 14) of the Convention in that the Federal Court delivered judgments in his case despite the fact that he had not paid the advance court fees.

However, the applicant has not shown that the Federal Court treated his cases differently from other comparable cases.

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

For these reasons, the Commission by a majority

DECIDES TO JOIN APPLICATIONS Nos. 24101/94 and 24440/94 and

DECLARES THE APPLICATIONS INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)