AS TO THE ADMISSIBILITY OF

Application No. 34920/97
by Josef MÜLLER
against Switzerland

The European Commission of Human Rights (First Chamber) sitting in private on 21 May 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 21 January 1997 by Josef Müller against Switzerland and registered on 14 February 1997 under file No. 34920/97;

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 Swiss citizen born in 1924, is a businessman residing in Zürich.

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

On 16 December 1994 the applicant introduced a private criminal action (Privatstrafklage) against 14 persons, inter alia, on account of fraud, abuse of office and defamation (ehrverletzende Beschuldigungen).

On 4 August 1995 the Winterthur District Court (Bezirksgericht) refused to admit the action, inter alia, as the applicant had failed to demonstrate any criminal act on the part of the persons concerned or as the prescription period for the alleged offences had expired (verjährt).

The applicant's appeal (Rekurs) was dismissed by the Court of Appeal (Obergericht) of the Canton of Zürich on 5 December 1995. His plea of nullity (Nichtigkeitsbeschwerde) was declared inadmissible by

the Court of Cassation (Kassationsgericht) of the Canton of Zürich on 21 May 1996.

The applicant filed a public law appeal (staatsrechtliche Beschwerde) which the Federal Court (Bundesgericht) declared inadmissible on 23 August 1996 as the applicant had failed to comply with the statutory requirements for filing such an appeal.

COMPLAINTS

1. The applicant complains under Article 6 of the Convention of the various proceedings and their outcome. He complains in particular that his criminal action was not admitted. He further complains, inter alia, of a lack of access to court; that he was neither properly nor publicly heard; and that he did not have a "tribunal established by law" within the meaning of Article 6 of the Convention.

2. Under Article 8 of the Convention the applicant complains that his honour was not sufficiently protected by the domestic authorities.

THE LAW

1. The applicant complains under Article 6 (Art. 6) of the Convention of the various proceedings and their outcome.

With regard to the judicial decisions of which the applicant complains, 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 in this case the applicant also raises various complaints under Article 6 para. 1 (Art. 6-1) Convention about the conduct of the proceedings. This provision states, insofar as relevant:

> "1. In the determination 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 recalls that in principle the Convention does not guarantee a right to institute criminal proceedings against third persons and that as a general rule the relevant proceedings do not fall to be examined under Article 6 (Art. 6) of the Convention. However, Article 6 (Art. 6) is applicable when a "civil right" is at issue, e.g. when, as in the present case, a private prosecution is introduced in order to allow the applicant to protect his reputation (see Eur. Court HR, Helmers v. Sweden judgment of 29 October 1991, Series A no. 212-A, p. 14, para. 29).

a) Insofar as the applicant complains that he was neither properly nor publicly heard and that he did not have a "tribunal" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention, the Commission notes that the Federal Court declared the applicant's public law appeal inadmissible for non-compliance with the statutory requirements for filing such an appeal. However, according to the Commission's case-law, there is no exhaustion of domestic remedies within the meaning of Article 26 (Art. 26) of the Convention where a

domestic appeal is not admitted because of a procedural mistake (see No. 6878/75, Dec. 6.10.76, Le Compte v. Belgium, D.R. 6, p. 79).

This part of the application must, therefore, be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

b) Insofar as the applicant may be understood as complaining of a lack of access to court within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention, in particular as his private criminal action for defamation was not admitted, the Commission notes the various reasons given herefor by the domestic authorities. It cannot, therefore, be said that the domestic authorities restricted or reduced the access left to the applicant in such a way or to such an extent that the very essence of his right of access to court was impaired (see Eur. Court HR, Philis v. Greece judgment of 27 August 1991, Series A no. 209, p. 21, para. 60).

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

2. Insofar as the applicant also relies on Article 8 (Art. 8) of the Convention, the Commission finds no issue under this provision. The remainder of the application is, therefore, also 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	J. LIDDY
Secretary	President
to the First Chamber	of the First Chamber