AS TO THE ADMISSIBILITY OF

Application No. 21701/93
by N.W.
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 30 June 1993, the following members being present:

MM. F. ERMACORA, Acting President of the First Chamber
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI

Mrs. M.F. BUQUICCHIO, Secretary to the First 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 20 May 1992 by N.W. against Germany and registered on 22 April 1993 under file No. 21701/93;

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 law student, is a German citizen living in M.

He complains about the denial of legal aid in the course of civil proceedings.

It follows from his statements and the documents submitted that the applicant tried to bring a civil action for damages against a medical doctor. He alleged that several years ago he consulted the doctor for complaints of a urological nature. Subsequently he discovered in 1989 that the doctor had reported on his case in an article published in the Medical Tribune of 27 June 1986. The report in question referred to a law student who suffered from prostatitis whenever he was in a particular stress situation (exams). The doctor explained that in such a case a surgical operation (urethrotomie) was of no use and only produced a disabled person (iatrogener Krüppel).

On 8 January 1991 the Munich Regional Court (Landgericht) rejected the request for legal aid. The Court stated that the medical report in question interfered with the applicant's right to privacy. The question of whether or not the interference was unlawful or not had to be decided by balancing this right and the doctor's right to inform others about his clinical experience in the interests of advancing the

medical profession. Considering that the publication in question did not name the applicant nor contain any other indications allowing to identify him, the court found that the publication did not violate the applicant's right to privacy.

On 10 June 1991 the Munich Court of Appeal (Oberlandesgericht) rejected the applicant's appeal against the denial of legal aid. Insofar as the applicant had pointed out that in the medical article he was referred to as a disabled person (Krüppel) the court stated that there was nothing to show that this term related to him.

The applicant then lodged a constitutional complaint which was rejected by a group of three judges of the Federal Constitutional Court (Bundesverfassungsgericht) on 19 December 1991 as being partly inadmissible and partly clearly ill-founded. The Court also refused to grant legal aid. It is stated in the decision that the civil courts had taken into account that the applicant's constitutional right to respect of his private right had been interfered with but not in an illegal manner as the medical doctor did have an interest in reporting on the medical case and had done so in a manner which did not reveal the applicant's identity. In these circumstances the decisions complained of did not disclose any appearance of arbitrariness or violation of constitutional rights.

COMPLAINTS

The applicant submits that he was denied a fair hearing because the Court of Appeal which in its decision of 10 June 1991 had fixed the value of claim to DM 100 should have informed him earlier about the amount of the value of claim and he would then have submitted further arguments. He also submits that the Federal Constitutional Court did not consider his arguments and invokes Articles 6 and 8 of the Convention.

THE LAW

The applicant complains of the denial of legal aid and submits that he did not have a fair hearing. He invokes Article 6 para. 1 (Art. 6-1) which provides inter alia:

> "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..."

It is true that according to the decision of the European Court of Human Rights in the Airey Case Article 6 para. 1 (Art. 6-1) guarantees to litigants an effective right of access to the courts for the determination of their "civil rights and obligations". However, the Court made it clear that it left to the state a free choice of the means to be used towards this end and furthermore that there was no obligation on the state to provide free legal aid for every dispute relating to a "civil right" (see judgment of 9 October 1979, Series A, Vol. 32, p. 15).

It is self-evident that where a state chooses a "legal aid" system to provide for access to court, such a system can only operate effectively, given the limited resources available, by establishing machinery to select which cases should be legally aided. Such limitations on the availability of free legal aid, common to most Convention countries, often require that the proposed litigation have reasonable prospects of success. Article 6 para. 1 (Art. 6-1) does not require that legal aid be provided in every case, irrespective of the nature of the claim and supporting evidence. Where an individual is

refused legal aid in a particular case because his proposed civil claim is not sufficiently well grounded the burden would then fall on him to secure his "access to court" in some other way such as, for example, bringing the action himself or seeking assistance from some other source.

In the present case, the Commission notes that German courts carefully examined the applicant's arguments and considered that his proposed action lacked reasonable prospects of success mainly because the medical report which the applicant considered to violate his right to privacy contained nothing that indicated that the applicant was the patient referred to.

It cannot, in the circumstances of the case, be found that the denial of legal aid was arbitrary.

Moreover, the applicant, a law student, has not shown that he is under all circumstances prevented from initiating civil proceedings by other means.

Consequently it cannot be found that he was denied "access to court" (cf. No. 8158/78, Dec. 10.6.80, D.R. 21, p. 95 para. 102).

Furthermore, and even assuming that Article 6 (Art. 6) applies to proceedings relating to the request for legal aid, there is nothing to show that the applicant did not have adequate possibility for arguing his case. Finally it cannot be found that the denial of legal aid in any way amounted to an interference with the applicant's right under Article 8 (Art. 8) of the Convention.

It follows that his complaint must be rejected as being 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 — Acting President of the First Chamber

(M.F. BUQUICCHIO) — (F. ERMACORA)