AS TO THE ADMISSIBILITY OF

Application No. 22201/93
by U. R. AG
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 6 September 1995, the following members being present:

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

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 28 June 1993 by U. R. AG against Switzerland and registered on 12 July 1993 under file No. 22201/93;

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

The applicant company, involved in the construction of machines, has its seat at Freienbach in Switzerland. Before the Commission, the applicant company is represented by U. R., the main shareholder of the company.

Particular circumstances of the case

On 27 November 1987 the Council for Vocational Training (Berufsbildungsrat) of the Canton of Schwyz, after hearing various apprentices as witnesses, decided to withdraw the applicant company's authorisation to train apprentices (Lehrlingsausbildungsbewilligung).

On 17 December 1987 the applicant company filed an appeal against this decision with the Government (Regierungsrat) of the Canton of Schwyz. Various other appeals directed against the Council for Vocational Training were at that stage also pending before the Government of the Canton of Schwyz.

On 17 August 1988 the Government dismissed the appeal against the withdrawal of the authorisation to train apprentices; the other appeals

were struck off its list of cases or declared inadmissible.

The applicant company then filed an administrative law appeal (Verwaltungsgerichtsbeschwerde) which the Federal Court (Bundesgericht) upheld on 10 March 1989 in respect of the complaint that the applicant company had not been present when the Council for Vocational Training had heard various apprentices as witnesses. The Federal Court also quashed the decision concerning the costs imposed by the Government of the Canton of Schwyz.

The Government of the Canton of Schwyz then instructed the Department of Justice of the Canton of Schwyz to continue the proceedings. The Department offered the applicant company various dates at which the witnesses would be heard and the applicant company could be present. As the applicant company disagreed with all dates, it was itself requested to propose dates. However, it failed to do so. When eventually the date of 18/19 September 1989 was fixed for the hearing, the applicant company requested adjournment of the hearing. The request was refused whereupon the applicant company filed an appeal with the Administrative Court (Verwaltungsgericht) of the Canton of St. Gallen. The latter declared the appeal inadmissible on 3 November 1989 as the applicant company had failed to pay the advance court costs. The applicant then filed a public law appeal (staatsrechtliche Beschwerde) with the Federal Court, though it later withdrew the appeal and on 13 March 1990 the Federal Court struck the appeal off its list of cases.

Meanwhile, on 11 December 1989 the Department of Justice requested the applicant company to propose dates in February 1990 for the hearing of the witnesses. When the applicant company failed to do so, it was granted a further time-limit of 10 days to propose a date in April 1990. After the expiry of the time-limit the applicant company informed the Department of Justice that it had meanwhile filed a public law appeal with the Federal Court; it did not, however, make any proposals as to a date for the hearing.

On 5 April 1990 the Department of Justice fixed the hearing for 24 April 1990. The applicant company filed a request for reconsideration of the decision which the Department of Justice dismissed on 11 April 1990. The applicant company filed an appeal against the decision of 5 April 1990 which the Administrative Court declared inadmissible on 19 April 1990.

The applicant company filed an administrative law appeal with the Federal Court against the decision of the Department of Justice of 11 April 1990, and a public law appeal against the decision of the Administrative Court of 19 April 1990.

The hearing took place on 24 April 1990, and the witnesses were questioned in the presence of U.R. The minutes of the hearing were transmitted to the applicant company for observations. Following a prolongation of the time-limit, the applicant company submitted comments on 2 July 1990. As the applicant company had not received the entire minutes, the latter were again transmitted to the applicant company which filed further observations on 30 July 1990.

Meanwhile, on 15 May 1990 the Government of the Canton of Schwyz dismissed the applicant company's challenge of the chairman of the Council for Vocational Training, and of the administrator at the Department of Justice dealing with the case-file.

On 21 August 1990 the Government of the Canton of Schwyz dismissed the applicant company's appeal and confirmed the withdrawal of the authorisation to train apprentices. The Government also imposed costs of 4,043 SFr on the applicant company.

On 30 September 1990 the applicant company filed an

administrative law appeal. The Government of the Canton of Schwyz as well as the Federal Economics Department (Eidgenössisches Volkswirtschaftsdepartement) filed their observations on the appeal. The applicant company commented thereupon on 13 May 1991 after which the other parties were given the opportunity to file further observations.

The applicant company's request for a third round of observations was dismissed by the Federal Court on 26 September 1991.

In its decision of 22 December 1992 the Federal Court joined the various appeals and dismissed them. It found that the Government of the Canton of Schwyz had not, as alleged by the applicant company, incorrectly assessed the facts, and it concluded that the applicant lacked the personal qualities to train apprentices. The Federal Court also dismissed the applicant company's complaint that the Government of the Canton of Schwyz had incorrectly imposed costs.

The Federal Court's decision was served on 28 December 1992.

Relevant domestic law

According to Section 6 of the Federal Act on Vocational Training (Bundesgesetz über die Berufsbildung), the elementary vocational training should offer the required abilities and knowledge for the profession at issue. The training should enhance the general knowledge of the apprentices and enable the development of their personality.

According to Section 10 of the Federal Act, apprentices may only be trained by masters (Lehrmeister) who have the required professional abilities as well as the necessary personal skills. The masters must moreover have themselves attended a masters' training course.

Section 22 provides that the master must train the apprentice systematically and according to the requirements of the profession (fachgemäss).

COMPLAINTS

The applicant company complains that it did not have a public hearing in these proceedings.

The applicant company also complains that the authorisation to train apprentices should have been withdrawn from the master (Lehrmeister), and not from the applicant company as such.

The applicant company further complains that the renewed hearing of the witnesses was pointless, as they had been influenced by receiving the minutes of the previous hearing. Thus, before the renewed hearing the witnesses were in a position to study what they had said at the previous hearing.

The applicant company also complains of the excessive length of the entire proceedings, lasting from 1987 until 1992.

Finally, the applicant company complains that the Government of the Canton of Schwyz in its decision of 21 August 1990 imposed costs on the applicant company, although the Federal Court on 10 March 1989 had quashed the previous decision of the Government of 17 August 1988.

The applicant company relies on Article 6 para. 1 of the Convention, arguing that the proceedings at issue were "civil" within the meaning of Article 6 para. 1 of the Convention in that the withdrawal of the authorisation to train apprentices affected the basic economic existence of the applicant company which would be deprived of its next generation of staff and could thus hardly be sold.

THE LAW

1. The applicant company raises various complaints about the fairness of the proceedings. It relies on Article 6 para. 1 (Art. 6-1) of the Convention which states, insofar as relevant:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time ..."

2. The Commission notes that the proceedings in which the applicant association was involved concerned the withdrawal of an authorisation to train apprentices. An issue arises as to whether such proceedings concerned "the determination of (the applicant company's) civil rights and obligations" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. The Commission need nevertheless not resolve this issue since the application is in any event inadmissible for the following reasons.

3. The applicant company complains about the outcome of the proceedings, in particular that the authorisation to train apprentices should have been withdrawn from the master, not from the applicant company. The applicant company also complains that the Government of the Canton of Schwyz incorrectly imposed the court costs on the applicant company.

However, under Article 19 (Art. 19) of the Convention the Commission's only task is to ensure the observance of the obligations undertaken by the Parties to 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. 21283/93, Dec. 5.4.94, D.R. 77-B pp. 81, 88).

4. The applicant company also complains that it did not have a public hearing in these proceedings.

a) Insofar as the applicant company may be understood as complaining of the proceedings before the Administrative Court of the Canton of St. Gallen, it has not shown that it raised this complaint in a public law appeal before the Federal Court. In this respect, the applicant company has therefore not complied with the requirement as to the exhaustion of domestic remedies within the meaning of Article 26 (Art. 26) of the Convention, and this part of the application must be declared inadmissible according to Article 27 para. 3 (Art. 27-3) of the Convention.

b) Insofar as the applicant company may be understood as complaining of the proceedings before the Federal Court, the Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention does not prevent a person from waiving of his own free will, either expressly or tacitly, the entitlement to have his case heard in public (see Eur. Court H.R., Schuler-Zgraggen judgment of 24 June 1993, Series A no. 263, p. 19, para. 58).

In the present case the applicant company has not shown that it made a request for a public hearing during the proceedings. The applicant company must therefore be considered as having waived its right to a public hearing. This part of the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant company further complains that the renewed hearing of the witnesses was pointless, as they had been influenced by

receiving the minutes of the previous hearing.

The Commission recalls that the admissibility of evidence is primarily a matter for regulation by national law and, as a 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 mutatis mutandis Eur. Court H.R., Asch judgment of 26 April 1991, Series A no. 203, p. 10, para. 26).

In the present case the Commission finds no indication that in these proceedings the applicant company could not put forward its point of view or that the proceedings were otherwise unfairly conducted. In particular, the Commission notes that a representative of the applicant company was present when the witnesses were heard, and that the representative thus had the possibility to put forward his point of view in respect of any statement of the witnesses with which he disagreed.

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

6. Finally, the applicant company complains of the length of the proceedings.

As regards the period to be considered, the Commission recalls the judgment in the König case according to which that applicant "could not seise the competent court before having the lawfulness and the expediency of the impugned administrative acts examined in preliminary proceedings ... before the administrative authority ... Consequently ... the reasonable time stipulated by Article 6 para. 1 (Art. 6-1) starts to run on the day on which (the applicant) lodged an objection against the withdrawals of his authorisations" (Eur. Court H.R., König judgment of 28 June 1978, Series A no. 27, p. 33, para. 98).

In the present case, after the Council for Vocational Training of the Canton of Schwyz had withdrawn the authorisation of the applicant company to train apprentices, the latter filed an appeal on 17 December 1987 to the Government of the Canton of Schwyz. The Commission finds that on this date the period to be examined under Article 6 para. 1 (Art. 6-1) of the Convention commenced.

The proceedings ended on 28 December 1992 when the decision of the Federal Court of 22 December 1992 was served on the applicant.

The relevant period therefore lasted five years and 11 days.

The Commission recalls that the reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and having regard in particular to the complexity of the case and the conduct of the applicant and of the relevant authorities (see Eur. Court H.R., Vernillo judgment of 20 February 1991, Series A no. 198, p. 12, para. 30).

The Commission considers at the outset that the proceedings, concerning the withdrawal of an authorisation to train apprentices, could not be regarded as complex.

As regards the conduct of the applicant company, the Commission notes that, after the Federal Court upheld the applicant company's administrative law appeal on 10 March 1989, the Department of Justice attempted to fix a date for the hearing of the witnesses. However, the applicant first disagreed with all dates proposed and subsequently failed to propose dates although invited to do so. When eventually a date was fixed for 18/19 September 1989, the applicant company requested an adjournment of the hearing. The request was refused

whereupon the applicant company filed an appeal which the Administrative Court declared inadmissible on 3 November 1989 as the applicant company had not paid the advance court costs.

Subsequently, the Department of Justice again requested the applicant company on 11 December 1989 to propose dates for a hearing, which the latter failed to do. When a date was fixed for 5 April 1990, the applicant company filed an appeal with the Administrative Court and also with the Federal Court.

Thus, the applicant company was to a large extent itself responsible for the lapse of time after 10 March 1989, when the Federal Court upheld the applicant company's administrative law appeal, until 21 August 1990 when the Government of the Canton of Schwyz again dismissed the applicant company's appeal.

The Commission has finally examined the conduct of the authorities. It considers that on the whole the authorities constantly and diligently pursued the case until 21 August 1990 when the Government of the Canton of Schwyz dismissed the applicant company's appeal.

Subsequently, nearly 27 months elapsed after the applicant company had filed its administrative law appeal on 30 September 1990 until the Federal Court gave its judgment on 22 December 1992. During this period the Federal Court granted the parties a second opportunity to present observations on the case. Thus, the applicant company filed its observations on 13 May 1991, whereupon the other parties were offered the possibility to reply thereto.

It is true that a considerable period of time elapsed thereafter until 22 December 1992 when the Federal Court gave its judgment. However, the Commission notes that the Federal Court was also confronted with other appeals filed by the applicant company during the same proceedings. Moreover, the applicant company itself did not indicate any interest in the speedy conclusion of the proceedings by requesting the Federal Court to conduct a further third round of observations; the Federal Court refused this request on 26 September 1991.

Making an overall assessment of the proceedings, the Commission finds that there is no indication of any periods of delay attributable to the authorities which would exceed the requirement of a "reasonable time" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

This part 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, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)