AS TO THE ADMISSIBILITY OF

Application No. 16461/90
by M.Z.
against Switzerland

The European Commission of Human Rights sitting in private on 9 April 1992, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ
B. MARXER

Mr. J. RAYMOND, Deputy Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 31 March 1990 by M.Z. against Switzerland and registered on 19 April 1990 under file No. 16461/90;

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 parties, may be summarised as follows:

The applicant, a Swiss citizen born in 1947, is a lawyer (Rechtsanwalt) residing at St. Gallen in Switzerland. Before the Commission he is represented by Mr. L.A. Minelli, a lawyer practising at Forch in Switzerland.

Particular circumstances of the case

The applicant has his law office in St. Gallen at M.-Street. The telephone number and address of his office are published in the St. Gallen telephone directory.

On 4 November 1988 the applicant applied to the St. Gallen Directorate of Telecommunications (Fernmeldedirektion) for a telephone

connection for his private apartment at Z.-Street. The Directorate decided on 23 November 1988 to provide the applicant with a telephone connection in his apartment and to publish the telephone number and address of the applicant's apartment in the St. Gallen telephone directory. As a result, the applicant would have had two entries in the directory: his own private telephone number and his private address would have been mentioned under his name; under "Lawyers' Offices" his office telephone number and address would have been mentioned.

The applicant appealed against this decision to the Head Office of the Swiss Postal Telephone and Telegraph authorities (PTT - Generaldirektion der Schweizerischen Post-, Telephon- und Telegraphenbetriebe), complaining in particular about the obligation to publish the telephone number and address of his apartment.

During these proceedings the Head Office, on 25 January 1989, forwarded to the applicant statements on his appeal of the St. Gallen Directorate of Telecommunications and of the competent department of the Head Office; both statements concluded that the appeal should be dismissed. The Head Office also informed the applicant that for the time being his address and telephone number would not be made accessible to the public. It further drew the applicant's attention to the possibility of having a second connection at his private apartment, not to be be listed in the telephone directory, which could be used while the first connection is not being used.

By letter of 22 February 1989 the applicant informed the Head Office that he refused the offer of a second connection at home.

On 18 May 1989 the Head Office dismissed the applicant's appeal.

The applicant then filed an administrative law appeal (Verwaltungsgerichtsbeschwerde) with the Federal Court (Bundesgericht) in which he complained inter alia that a modern telephone directory was a form of a "Who's Who" and that he did not wish everyone with whom he had to deal professionally to know about his private address and telephone number. The Court dismissed the appeal on 15 September 1989. The decision was served on the applicant on 22 November 1989.

The Court first noted that the PTT authorities had complied with the applicable PTT legislation, namely Section 24 of the Act on Telegraph and Telephone Communications (Telegraphen- und Telephonverkehrsgesetz) of 1922, Section 58 of Ordinance Nr. 3 to the 1922 Act, and the internal regulations of the PTT authorities (see below Relevant domestic law and practice). The decision continues:

<Translation>

> "6.- a) On the basis of this assessment it can be concluded that a telephone subscriber must in principle be included with his main telephone connections in the list of participants. In view of the interest in an orderly and client friendly telephone service, this is not merely a right of the participant but also a duty. Exceptions to this duty may only be granted under certain conditions; they have been compiled - for the internal use of the PTT - in Section 2 of the Regulations on telephone directories. These conditions do not comprise the applicant's request not to have his private connection listed in the telephone directory.
>
> b) The interest of the public in having up-to-date and complete telephone directories takes precedence over the private wish not to be disturbed outside working hours or on weekends. As the applicant can only refer to this wish and no other interest, the contested decision appears - after balancing the opposing interests - also to be proportionate. In this context of balancing, one may further consider that a complete telephone

directory will effectively relieve the burden on the telephone enquiry service."

<German>

"6.- a) Aufgrund dieser Beurteilung ergibt sich, dass ein Telefonabonnent grundsätzlich mit seinen Hauptanschlüssen ins Teilnehmerverzeichnis aufzunehmen ist. Dabei handelt es sich im Interesse eines geordneten und kundenfreundlichen Telefondienstes nicht bloss um ein Recht des Teilnehmers, sondern auch um eine Pflicht. Von dieser Pflicht sind Ausnahmen nur unter bestimmten Voraussetzungen zu gestatten; sie sind - für den PTT-internen Gebrauch - in Ziff. 2 des Reglementes über die Telefonbücher zusammengestellt. Das Gesuch des Beschwerdeführers um Nichteintrag seines privaten Anschlusses im Telefonbuch fällt nicht darunter.

b) Das Interesse des Publikums an einem aktuellen und vollständigen Stand der Telefonbücher geht dem privaten Wunsch vor, ausserhalb der Arbeitszeit und an Wochenenden ungestört zu sein. Weil der Beschwerdeführer für sich kein anderes Interesse als diesen Wunsch anzuführen vermag, erscheint der angefochtene Entscheid - bei Abwägung der sich entgegenstehenden Interessen - auch als verhältnismässig. Bei dieser Abwägung darf zusätzlich berücksichtigt werden, dass ein vollständiges Telefonverzeichnis auch den telefonischen Auskunftsdienst wirksam zu entlasten vermag."

Following the Federal Court's decision, the applicant requested cancellation of the telephone connection at his home, explaining that there was no longer a need for it.

The applicant then requested a further connection at his office; according to the second paragraph of Section 2 of the Regulations on telephone directories for internal use (see below Relevant domestic law and practice) such further connections of the same subscriber in the same town are possible, if they are linked with a branch line. The applicant's request not to have this number published was granted.

A statement of the PTT authorities, dated 22 September 1989, confirmed that the branch line led from the second connection in the applicant's office to his address at Z.-street.

Relevant domestic law and practice

According to Section 24 of the 1922 Act on Telegraph and Telephone Communications, every subscriber to a telephone connection must be listed in his local telephone directory. According to Section 58 of Ordinance No. 3 to the 1922 Act, the PTT authorities will publish the telephone subscribers in alphabetical order under the name of the town where the subscriber has the main telephone connection. The publication includes the person's surname and first name, the street name, possibly the postal code, and the telephone number itself.

The Head Office of the PTT authorities has published regulations on telephone directories for internal use. Section 2 concerns derogations from the requirement of publication of a telephone number in the directory . This provision states, insofar as relevant:

<Translation>

"Publication in the telephone directory may be dispensed with upon the subscriber's request or upon instruction of the Directorate of telecommunications in the case of

- further telephone connections of the same subscriber on the

same real property;

- further connections of the same subscriber in the same town if these are linked with a branch line or something similar..."

<German>

"Auf den Eintrag im Telefonbuch kann auf Wunsch des Abonnenten oder auf Veranlassung der Fernmeldedirektion verzichtet werden für

- weitere Anschlüsse des gleichen Abonnenten auf dem gleichen Grundstück;

- weitere Anschlüsse des gleichen Abonnenten in der gleichen Ortschaft, wenn diese durch eine Zweigleitung oder ähnliches verbunden sind..."

Apart from these derogations the PTT authorities will not publish a telephone number if there is a danger, certified by the police, for the life and security of the telephone subscriber and his family. Of the approximately 3.5 million telephone subscribers in Switzerland in 1989, 439 subscribers were authorised on these grounds not to have their number and address published in the telephone directory.

COMPLAINTS

The applicant complains under Articles 8 and 10 of the Convention that as a telephone subscriber he is obliged to publish his private telephone number in the official telephone directory.

Under Article 8 of the Convention he submits in particular that if a lawyer requests his private telephone connection not to be published, he does so in order not to be disturbed outside working hours by clients and third persons. The security of the lawyer and his family also plays a part.

The applicant submits that there is not sufficient interest for the State to ensure that everyone who has a telephone in his home may be contacted by everybody else by telephone.

Under Article 10 of the Convention the applicant complains of a violation of the right to freedom of expression. He submits that the right to freedom of expression is violated if persons with whom he does not wish to communicate are given a facility to telephone him, so that he is compelled to answer their calls.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 31 March 1990 and registered on 19 April 1990.

On 8 April 1991 the Commission decided to communicate the application to the respondent Government and invite them to submit written observations on the admissibility and merits with regard to the issues under Article 8 of the Convention.

The Government's observations were received by letter dated 12 July 1991, the applicant's observations in reply are dated 9 September 1991.

THE LAW

1. The applicant complains that as a telephone subscriber he is obliged to have his private telephone number listed in the official telephone directory. The applicant relies on Article 8 (Art. 6) of the Convention which states:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

a) The Government submit that the applicant has not complied with the requirement as to the exhaustion of domestic remedies within the meaning of Article 26 (Art. 26) of the Convention. In particular before the Federal Court the applicant did not invoke Article 8 or 10 (Art. 8, 10) of the Convention.

The applicant recalls that in his administrative law appeal to the Federal Court he invoked in substance his right to a private sphere at home.

Under Article 26 (Art. 26) of the Convention the Commission may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law. In the present case, the Commission considers that the applicant in fact raised the complaints he is now making before the Commission before the Federal Court. The Federal Court then dealt with the complaints, though it eventually dismissed the applicant's appeal.

It follows that the application cannot be rejected for non-exhaustion of domestic remedies under Article 26 (Art. 26) of the Convention.

b) With reference to the concrete circumstances of the case the Government submit that the applicant cannot claim to be a victim within the meaning of Article 25 (Art. 25) of the Convention for three reasons. First, he refused the authorities' offer of 25 January 1989 for the installation of a second connection at his home which would not have been listed in the telephone directory. Furthermore, his telephone number and address were never actually published. Finally, the applicant now has a branch line from the office to his home.

The applicant submits that, had he accepted the offer of 25 January 1989 to have a second connection at his home, the first connection would still have been published in the telephone directory. Moreover he draws attention to the fact that all authorities refused his request not to have his number and address published; if he were again to request a new connection for his home, he would again risk publication. Finally, the so-called secondary line must not, in the applicant's opinion, be confused with a main connection. The main connection is in the applicant's office, with a branch line of 240m leading to his home. It is not possible to use this line from his home when somebody in the office is using the main connection.

The applicant submits that the authorities put him before the alternative: either he can telephone freely, but his number will be published; or his private sphere is respected, but he cannot telephone freely. The applicant claims that in doing so the authorities did not respect his right to respect for private life within the meaning of Article 8 (Art. 8) of the Convention.

The Commission recalls that it is not competent to review the relevant domestic law and practice in abstracto. Rather, it must determine whether the manner in which they applied to or affected the applicant raises an issue under Article 8 (Art. 8) of the Convention (see Eur. Court H.R., Hauschildt judgment of 24 May 1989, Series A no. 154, p. 21, para. 45).

The Commission further notes that normally telephone subscribers have their telephone numbers and their addresses published in telephone directories. There could nevertheless be an interference with the right to respect for private life within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention where a telephone number and address are published against the subscriber's will with a consequent risk of invasion of privacy.

Turning to the circumstances of the present case, the Commission observes that the applicant, when applying for a telephone connection at his home, requested that the telephone number and his address should not be published in the telephone directory. While he was granted the telephone connection on 23 November 1988, his request not to publish his number and address was refused, upon appeal, by the Federal Court on 15 September 1989. Immediately after the Court's decision, the applicant requested cancellation of his telephone connection at home.

At no time were the applicant's private address or private telephone number inserted in a telephone directory.

The Commission furthermore notes the Government's submissions according to which the applicant now has a so-called secondary line from his office to his home.

It is true that according to the applicant's submissions there may be a certain inconvenience in the use of this telephone connection. However, the Commission considers that the applicant in fact now has a telephone connection at home without a private telephone number or his private address appearing in a telephone directory.

As neither a private telephone number of the applicant nor a private address were published and the applicant in fact has a telephone at home, the Commission considers that the circumstances of the present case do not disclose a lack of respect on the part of the Swiss authorities for the applicant's private life within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

2. Insofar as the applicant raises further complaints under Article 10 (Art. 10) of the Convention the Commission finds that no issue arises under this provision. It follows that the remainder 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

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission President of the Commission

(J. RAYMOND) (C.A. NØRGAARD)