AS TO THE ADMISSIBILITY OF

Application No. 23855/94
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 31 March 1994 by Josef MÜLLER against Switzerland and registered on 12 April 1994 under file No. 23855/94;

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

A. Proceedings leading to the Federal Court judgment of 14 September 1993

By three decisions of 11 May 1993 the Meilen District Court (Bezirksgericht) granted final warrant (definitive Rechtsöffnung) for enforcement of the applicant's debts. The debts amounted to 35,700 SFr and concerned the outstanding fees for 26 proceedings before the Federal Court (Bundesgericht). The applicant was informed that a plea of nullity (Nichtigkeitsbeschwerde) concerning these decisions could be filed within ten days with the Canton of Zurich Court of Appeal (Obergericht).

On 23 July 1993 the applicant introduced a public law appeal (staatsrechtliche Beschwerde) with the Federal Court. He complained of a violation of Article 6 para. 1 and Article 13 of the Convention in the proceedings before the Meilen District Court. He also asked for

interim measures and requested the exclusion for bias, on various grounds, of all Federal Court judges. He claimed that his appeal should be examined by an independent chamber pursuant to Section 26 para. 3 of the Federal Judiciary Act (Bundesgesetz über die Organisation der Bundesrechtspflege).

On 27 July 1993 the applicant was invited to pay advance court fees of 5,000 SFr by 31 August 1993. He was informed that his appeal lacked prospects of success and that if he failed to pay the fees, his appeal would be declared inadmissible (auf Ihre Rechtsvorkehr wird nicht eingetreten).

On 31 August 1993 the applicant protested against his case being dealt with by challenged judges and in particular by the President of the Civil Law Chamber II (Zivilabteilung) who had decided on the advance court fees. He requested revocation (Abnahme) of the time-limit for payment of the advance court fees and their subsequent determination by an independent chamber. He further alleged that the sum imposed on him was prohibitively high and contrary to Sections 153 and 153a of the Federal Judiciary Act.

By judgment of 14 September 1993 the Federal Court, consisting of the President of the Civil Law Chamber II and two other judges (all three challenged on the ground of their participation in previous proceedings to which the applicant had been a party), declared the applicant's public law appeal inadmissible pursuant to Section 150 para. 4 of the Federal Judiciary Act.

The Federal Court noted that the applicant's request for the exclusion of judges was inadmissible for reasons of which the applicant had already been informed in the course of previous proceedings. The applicant was charged court fees of 3,000 SFr and a disciplinary fine (Ordnungsbusse) of 1,500 SFr was imposed on him pursuant to Section 31 para. 2 of the Federal Judiciary Act. The judgment was served on the applicant on 1 October 1993.

B. Proceedings leading to the Federal Court judgment of 21 September 1993

On 26 July 1993 the Meilen District Court granted final warrant for enforcement of the applicant's debts amounting to 6,000 SFr. The debts concerned outstanding fees for six proceedings before the Federal Court. The applicant was informed that a plea of nullity concerning this decision could be filed within ten days with the Canton of Zurich Court of Appeal.

On 20 August 1993 the applicant introduced a public law appeal against this decision with the Federal Court. He requested that it should be joined with his public law appeal of 23 July 1993 concerning a similar matter (see A above). The applicant further requested, for various reasons, the exclusion of all Federal Court judges.

On 24 August 1993 the applicant was invited to pay, by 15 September 1993, advance court fees of 2,000 SFr. His request for joinder of the public law appeals was rejected as the proceedings concerning the appeal of 23 July 1993 were about to be terminated. The request for interim measures was rejected as the public law appeal lacked prospects of success.

On 14 September 1993 the applicant asked for revocation of the time-limit for payment of the advance court fees and reiterated his challenges of the Federal Court judges. He further alleged that the required sum was prohibitively high and unlawful.

On 21 September 1993 the Federal Court, consisting of the same judges as in the above proceedings, declared inadmissible both the applicant's public law appeal and his request for the exclusion of all

Federal Court judges. The applicant was charged the court fees of 1,000 SFr and a disciplinary fine of 1,500 SFr was imposed on him.

C. The proceedings leading to the Federal Court judgments of 23 November 1993

On 23 July and 20 August 1993 the applicant lodged a plea of nullity with the Canton of Zurich Court of Appeal. He complained of the Meilen District Court decisions of 11 May and 26 July 1993 (see A and B above). In two decisions of 30 August 1993 the Court of Appeal declared the pleas of nullity inadmissible.

On 21 October 1993 the applicant introduced a public law appeal with the Federal Court in which he complained of the aforesaid Court of Appeal decisions. He requested the exclusion of 16 Federal Court judges who had participated in the 32 proceedings the outstanding fees for which allegedly represented the subject-matter of his public law appeal.

The Federal Court instituted two proceedings, in the applicant's view in order to increase the court costs. On 25 October 1993 the applicant was invited to pay advance court fees of respectively 5,000 and 4,500 SFr by 16 November 1993. He was informed that his public law appeal lacked prospects of success.

On 16 November 1993 the applicant asked for the exclusion for bias of the President of the Civil Law Chamber II on the ground that he had delivered, in the past, unlawful judgments in the applicant's cases, that he had rejected the applicant's request for interim measures and divided the appeal into two proceedings. He alleged that under the law in force the advance court fees should not exceed 2,000 SFr.

By two judgments of 23 November 1993 the Federal Court declared the public law appeal inadmissible. The Court comprised the President of the Civil Law Chamber II and one judge who had participated in earlier proceedings in the course of which the fees at issue were imposed (see A and B above). The Federal Court also declared inadmissible the requests for the exclusion of judges and found the applicant's submissions of 16 November 1993 abusive and of no effect. The Federal Court charged the applicant respectively 3,000 and 1,000 SFr court fees and imposed a disciplinary fine of 1,500 SFr in each of the proceedings.

D. Proceedings leading to the Federal Court judgment of 3 March 1994

On 7 September 1993 the Meilen District Court granted final warrant for enforcement of the applicant's debts amounting to 24,500 SFr. The debts concerned the outstanding fees for 11 proceedings before the Federal Court.

On 5 November 1993 the Canton of Zurich Court of Appeal declared inadmissible the applicant's plea of nullity concerning the Meilen District Court decision.

On 27 January 1994 the applicant introduced with the Federal Court a public law appeal against the aforesaid Court of Appeal decision. He challenged for bias all Federal Court judges since he considered that as the subject-matter of the proceedings was outstanding fees concerning its earlier judgments, the Federal Court was a party to the proceedings. He requested that this question should be decided by the plenary Court.

On 31 January 1994 the applicant was invited to pay advance court fees of 4,500 SFr by 28 February 1994. He was informed that he could only waive his public law appeal by means of a written explanation and that a possible failure to pay the advance fees would not be regarded

as a waiver. His request for interim measures was rejected as the appeal lacked prospects of success.

On 28 February 1994 the applicant requested revocation of the time-limit for payment of the advance court fees and examination of his case, including determination of the advance fees and of the time-limit for their payment, by an independent chamber established pursuant to Section 26 para. 3 of the Federal Judiciary Act. He further alleged that the advance court fees were prohibitively high and unlawful since his case was not a complex one.

By its judgment of 3 March 1994 the Federal Court declared the public law appeal inadmissible pursuant to Section 150 para. 4 of the Federal Judiciary Act. The Federal Court found the applicant's requests for the exclusion of judges abusive and declared them also inadmissible. The applicant was charged court fees of 2,000 SFr and fined 1,500 SFr pursuant to Section 31 para. 2 of the Federal Judiciary Act.

The relevant domestic law

According to Section 26 para. 1 of the Federal Judiciary Act, if the reason adduced for the exclusion of a judge is contested (streitig), the question of exclusion is to be decided by the chamber without the participation of the judge challenged. Para. 3 of the same Section provides for the appointment, if no valid deliberation is possible because of the number of challenged judges, of the necessary number of extraordinary judges from among Presidents of the cantonal Courts of Appeal. The extraordinary judges are appointed by drawing lots. They decide on the request for exclusion and, if necessary, also on the merits.

Pursuant 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 in case of repetition up to 1,500 SFr on account of malicious or wanton conduct of the proceedings (böswillige oder mutwillige Prozessführung).

Pursuant to 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 the case of public or administrative 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 when 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

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 above proceedings leading to the Federal Court judgments of 14 and 21 September 1993, 23 November 1993 and 3 March 1994 in that:

a) the cases were decided by biased judges in spite of the applicant's requests for their exclusion;

b) the advance court fees were disproportionately high and they were imposed unlawfully by the President of the Civil Law Chamber II who was challenged for bias;

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

d) he was charged court fees amounting to 10,000 SFr and fined a total of 7,500 SFr;

e) there was no public hearing in his cases;

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

The applicant further alleges a violation of Article 13 of the Convention in that he was deprived, by the imposition of disproportionately high and unlawful advance court fees, of an effective remedy against the alleged violations of his rights guaranteed by the Convention.

Finally, the applicant alleges a violation of Article 14 of the Convention in that the Federal Court imposed high court fees and fines on him. He alleges that instead of delivering the judgments the Federal Court could have issued, as in cases brought by other applicants, orders striking off the cases (Abschreibungsverfügungen) and charged him considerably lower fees.

THE LAW

1. 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 does not consider it necessary to examine the applicability of Article 6 (Art. 6) of the Convention to each of the proceedings at issue as the application is in any event inadmissible for the following reasons.

a) To the extent that the applicant complains of the imposition of disproportionately high advance court fees on him and of participation of biased judges in the proceedings leading to the judgments complained of, 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. Pursuant to Section 153 para. 1 of the Federal Judiciary Act, the Federal Court has a margin of appreciation in deciding on court fees and the advance fees actually imposed in each of the proceedings did not exceed the maximum amount (5,000 SFr) on the relevant scale of fees.

Moreover, in the proceedings complained of the Federal Court was not empowered to deal with the applicant's complaints with full jurisdiction, but it was to examine his public law appeals as to the breach of the applicant's constitutional rights. 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. Finally, in the first two sets of proceedings (see A and B above) the applicant sought redress directly with the Federal Court whereas under Swiss law he could have lodged a plea of nullity with the cantonal Court of Appeal.

As to the complaint of alleged bias on the part of the participating judges who limited the applicant's access to court (by imposing a requirement that he pay advance court fees and by declaring his appeal 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 case, however, the reasons adduced for alleged bias of the judges (the point at issue being outstanding fees for earlier Federal Court proceedings; participation in those proceedings as well as in other proceedings concerning different subject-matters; the opinion that the appeals lacked prospects of success expressed when deciding on the advance court fees and the decision to divide one appeal into two proceedings) were considered irrelevant by the Federal Court and the Commission does not find this conclusion 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) To the extent that the applicant complains of the absence of a public hearing in his cases, the Commission recalls that the Federal Court did not determine the merits of his public law appeals because of his failure 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.

2. 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 in each of the proceedings 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 the law then in force was imposed. 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.

3. To the extent that the applicant alleges a violation of Article 13 (Art. 13) of the Convention, the Commission recalls that 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). However, 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 provisions of 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.

4. Finally, the applicant alleges a violation of Article 14 (Art. 14) of the Convention in that the Federal Court imposed high court fees and disciplinary fines on him.

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

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber President of the Second Chamber

(M.-T. SCHOEPFER) (H. DANELIUS)