COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (PLENARY)

CASE OF BELILOS v. SWITZERLAND

(Application no. 10328/83)

JUDGMENT

STRASBOURG

29 April 1988

In the Belilos case[*],

The European Court of Human Rights, taking its decision in plenary session pursuant to Rule 50 of the Rules of Court and composed of the following judges:

Mr. R. RYSSDAL, *President*,
Mr. J. CREMONA,
Mr. Thór VILHJÁLMSSON,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. F. GÖLCÜKLÜ,
Mr. F. MATSCHER,
Mr. J. PINHEIRO FARINHA,
Mr. L.-E. PETTITI,
Mr. B. WALSH,
Sir Vincent EVANS,
Mr. R. MACDONALD,
Mr. C. RUSSO,
Mr. R. BERNHARDT,
Mr. A. SPIELMANN,
Mr. J. DE MEYER,
Mr. N. VALTICOS,

and also of Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 28 and 29 October 1987 and 22 and 23 March 1988,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Government of the Swiss Confederation ("the Government") on 18 July and 22 September 1986 respectively, within the three-month period laid down in Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 10328/83) against Switzerland lodged with the Commission

[*] Note by the Registrar: The case is numbered 20/1986/118/167. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

under Article 25 (art. 25) by Mrs. Marlène Belilos, a Swiss national, on 24 March 1983.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) of the Convention and to the declaration whereby Switzerland recognised the compulsory jurisdiction of the Court (Article 46) (art. 46), and the Government's application referred to Articles 45, 47 and 48 (art. 45, art. 47, art. 48). Both sought a decision from the Court as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 (art. 6-1).

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicant stated that she wished to take part in the proceedings pending before the Court and designated the lawyer who would represent her (Rule 30).

3. The Chamber of seven judges to be constituted included ex officio Mrs. D. Bindschedler-Robert, the elected judge of Swiss nationality (Article 43 of the Convention) (art. 43), and Mr. R. Ryssdal, the President of the Court (Rule 21 § 3 (b)). On 26 September 1986, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr. L.-E. Pettiti, Mr. B. Walsh, Mr. R. Bernhardt, Mr. A. Spielmann and Mr. N. Valticos (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43).

4. Mr. Ryssdal, who had assumed the office of President of the Chamber (Rule 21 § 5), consulted - through the Registrar - the Agent of the Government, the Delegate of the Commission and the lawyer of the applicant on the need for a written procedure (Rule 37 § 1). In accordance with his orders, the following documents were received by the registry:

- the applicant's memorial, on 22 December 1986;
- the Government's memorial, on 24 February 1987;
- a supplementary memorial from the applicant, on 4 May; and
- a supplementary memorial from the Government, on 12 June.

In a letter received by the Registrar on 23 April 1987, the Secretary to the Commission indicated that the Delegate would submit his observations at the hearing.

5. On 21 May, the Chamber decided to relinquish jurisdiction forthwith in favour of the plenary Court (Rule 50).

6. Having consulted - through the Registrar - the Agent of the Government, the Delegate of the Commission and the lawyer for the applicant, the President of the Court directed on 27 May that the oral proceedings should commence on 26 October 1987 (Rule 38).

7. The hearing was held in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government

Mr. J. VOYAME, Director
of the Federal Office of Justice, *Agent*,
Mr. M. KRAFFT, Ambassador,
Head of the Directorate of International Law, Department of Foreign Affairs,
Prof. L. WILDHABER, University of Basle,
Mr. P. ROSSY, Department
of Justice and Legislation, Canton of Vaud,
Mr. O. JACOT-GUILLARMOD, Head
of the International Affairs Department, Federal Office of Justice, *Counsel*;

- for the Commission
Mr. J.A. FROWEIN, *Delegate*;
- for the applicant
Mr. J. LOB, avocat, *Counsel*.

The Court heard addresses by Mr. Voyame, Mr. Krafft and Prof. Wildhaber for the Government, by Mr. Frowein for the Commission and by Mr. Lob for Mrs. Belilos, who also addressed the Court, as well as their replies to its questions.

8. On 9 December, the applicant provided particulars of some of her costs and expenses, as the Registrar had requested on 4 November on behalf of the Court. The Government and the Delegate of the Commission made observations on this matter, and these reached the registry on 18 January and 25 February 1988 respectively.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. Mrs. Marlène Belilos, who is a Swiss citizen, lives in Lausanne and was a student there at the material time.

1. The Lausanne Police Board

10. In a report of 16 April 1981, the Lausanne police laid an information against her for having contravened the municipality's General Police Regulations by having taken part in a demonstration in the streets of the city on 4 April for which permission had not been sought in advance. The march had been organised by the "Lausanne bouge" ("Lausanne on the move") movement, which on the preceding days had distributed leaflets calling on people to join the demonstration, and some 60 or 70 people had

taken part; they were requesting that the municipality should provide an autonomous youth centre.

At a sitting held on 29 May, the municipal Police Board, in the applicant's absence, imposed on her a fine of 200 Swiss francs (CHF).

11. Mrs. Belilos lodged an application under sections 36 et seq. of the Vaud Municipal Decisions Act of 17 November 1969 to have that decision set aside, and the Police Board held an initial hearing on 14 July. After reading out the police report, it heard the defendant and then the policemen who had laid the information. In view of the applicant's explanations, the Board adjourned its investigation of the case to a later date in order to be able to hear a witness. On 26 August, it gave Mrs. Belilos a further hearing, and also heard evidence from her former husband as a witness. He stated that at the material time he was with his ex-wife in a Lausanne café, where he had handed over to her the maintenance payment for their child.

12. The Police Board gave its decision on 4 September "without the interested parties being present". In the "As to the facts" part of its decision, it described the convening, the course and the consequences of the relevant demonstration; it went on to list the allegations made by Mrs. Belilos, who inter alia challenged the legitimacy of the body giving judgment and denied that she had taken part in the demonstration; thirdly, it mentioned the evidence given by the defendant's ex-husband; and, lastly, it noted that the policemen had confirmed their report and categorically denied the applicant's claim that she had not taken part.

In the "As to the law" part of its decision the Police Board noted that its jurisdiction could not be disputed and it concluded that it had "satisfied itself in the course of its inquiries that the defendant [had] indeed participated in the demonstration on 4 April 1981". Having regard to the fact, on the one hand, that Mrs. Belilos had not played an active role but, on the other hand, that this was not a first offence, the Board reduced the fine to 120 CHF; it also ordered her to pay costs of 22 CHF.

The decision was notified to the applicant by registered letter on 15 September.

2. The Criminal Cassation Division of the Vaud Cantonal Court

13. Mrs. Belilos applied to the Criminal Cassation Division of the Vaud Cantonal Court to have that decision declared null and void. She claimed principally that in view of the requirements of Article 6 (art. 6) of the Convention, the Police Board had no power to make a determination of the disputed offence; and in any event, she asked the court to hear her former husband and to redetermine the facts fully. The Criminal Cassation Division dismissed the appeal on 25 November 1981, holding:

"(...)

The applicant argued that the decision was not compatible with Art. 6 (art. 6) of the European Convention on Human Rights (ECHR), which enshrines the right to a hearing by an independent and impartial tribunal established by law, and that the reservations made when Switzerland acceded to the Convention did not allow an administrative authority, a fortiori where it was an agency of the executive that was judge in its own cause, to determine a criminal charge, the judicial review by the Cassation Division being moreover inadequate.

In a judgment of 9 June 1980, in the case of Marlène Belilos and Others, this court stated that by virtue of the reservations made by Switzerland, proceedings before an administrative authority relating to the determination of a criminal charge were not covered by the obligation to provide a public hearing and to pronounce judgment publicly (see also Cass.: Leonelli, 31 July/16 October 1981; Christinat, 23 May/6 August 1981).

As regards Art. 6 para. 1 (art. 6-1) ECHR, Switzerland made the following declaration (RS [Compendium of Federal Law] O.101, p. 25): 'The Swiss Federal Council considers that the guarantee of fair trial in Art. 6, paragraph 1 (art. 6-1), of the Convention, in the determination of ... any criminal charge against the person in question is intended solely to ensure ultimate control by the judiciary over the acts or decisions of the public authorities relating to ... the determination of such a charge.'

In its communication of 4 March 1974 concerning the Convention for the Protection of Human Rights and Fundamental Freedoms, the Federal Council stated that where the decision taken by an administrative authority could be referred to a court not for a ruling on the merits but solely for review of its lawfulness (pourvoi en nullité), the question arose whether that review procedure satisfied the requirements of Art. 6 (art. 6) of the Convention.

It answered this question in the affirmative, as Art. 6 para. 1 (art. 6-1) was intended only to ensure ultimate control by the judiciary, and the judicial element of a fair trial seemed to be sufficiently ensured in Swiss law as the Federal Court had derived from the right to a hearing rules on the administration of justice which corresponded to those listed in Art. 6 (art. 6) of the Convention (FF [Federal Gazette] 1974 I p. 1032, Communication).

The fact that appeal proceedings are in written form without any oral argument or taking of evidence is not contrary to Art. 6 (art. 6) ECHR (Cassation Division of the Federal Court: Risse, 14.9.1981).

The Cassation Division therefore carries out the ultimate control by the judiciary required by the European Convention on Human Rights, subject to the reservations made by Switzerland, even if it cannot hear witnesses.

..."

3. The Federal Court

14. The applicant lodged a public-law appeal against this decision with the Federal Court. In her submission, Switzerland's interpretative declaration in respect of the Convention (see paragraph 29 below) did not mean that an administrative authority such as the Police Board was

empowered to determine the merits of a criminal charge. Such a jurisdiction was conceivable only if judicial review was ultimately available. This was not so in the present case, however, as the Criminal Cassation Division of the Vaud Cantonal Court and the Federal Court had limited powers, which did not normally allow them to review questions of fact (on which the Police Board's findings were final), for example by examining witnesses. Furthermore, under section 12 of the Vaud Municipal Decisions Act the municipality could delegate its powers to a senior police official, who was an agent of the executive; that being so, the Police Board was acting as judge in its own cause.

15. On 2 November 1982, the Federal Court (1st Public-Law Division) delivered a judgment dismissing the appeal on the following grounds:

"...

2. The guarantee of a fair trial provided for in Article 6 § 1 (art. 6-1) ECHR [European Convention on Human Rights] lays down inter alia that 'everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law...'.

(a) The sole issue raised by the appellant's complaint is whether Article 6 (art. 6) ECHR precludes proceedings whereby the facts are established by a body such as the Police Board, which is not an independent tribunal. Contrary to that Board's statement in its ruling of 18 January 1982, the appellant did not claim, even by implication, that the Police Board was in this case an (administrative) body lacking impartiality. In any event, such a complaint was not formulated in terms sufficiently clear with regard to section 90(1)(b) OJ [Federal Judicature Act].

(b) The scope of Article 6 § 1 (art. 6-1) ECHR must be examined in the light of Switzerland's interpretative declaration, according to which: 'the Swiss Federal Council considers that the guarantee of fair trial in Article 6 § 1 (art. 6-1) of the Convention, ... is intended solely to ensure ultimate control by the judiciary over the acts or decisions of the public authorities ...'. (Article 1 § 1 (a) of the Federal Decree of 3 October 1974 approving the ECHR, RO [Official Collection of Federal Statutes] 1974, 2149.) In its communication of 4 March 1974 to the Federal Assembly, the Federal Council noted that this interpretative declaration was formulated precisely with a view to 'cases in which the decision taken by an administrative authority may be referred to a court not for a ruling on the merits but solely for review of its lawfulness (pourvoi en nullité)', on the basis of the interpretation of Article 6 § 1 (art. 6-1) given by the President of the European Commission of Human Rights (FF 1974 I p. 1032). The Federal Court finds no grounds for departing from that interpretative declaration (ATF [Judgments of the Swiss Federal Court] 107 Ia 167), even though its validity and its scope have been contested by academic writers (D. Brandle, Vorbehalte und auslegende Erklärungen zur europaïschen Menschenrechtskonvention, Zürich thesis 1978, pp. 113-114). Moreover, the European Court of Human Rights has also acknowledged that Article 6 § 1 (art. 6-1) is complied with in so far as a decision of an administrative authority may be subject to ultimate control by the judiciary, since the guarantee of a fair trial must be assessed having regard to the entire procedure (ATF 98 Ia 238; cf. J. Raymond, 'La Suisse devant les organes de la CEDH', in RDS [Revue de droit

suisse] 98/1979 II p. 67, and the decisions cited therein; D. Poncet, La protection de l'accusé par la Convention européenne des Droits de l'Homme, p. 29, no. 78).

3. The Vaud legislature used the right conferred on cantons by Article 345 § 1(2) CC [Swiss Criminal Code] to allow certain minor offences to be tried by the municipal authority (section 45 of the Local Authorities Act of 28 February 1956; sections 1 et seq. MDA [Municipal Decisions Act]). According to section 41 MDA, judicial review of such municipal decisions is effected by the Cassation Division of the Cantonal Court, which may determine both whether the correct procedure has been followed (in the case of a recours en nullité - section 43 MDA) and whether the law has been properly applied (in the case of a recours en réforme - section 44 MDA). It does not therefore have full competence to re-examine the facts. However, that is not necessary under Article 6 § 1 (art. 6-1) ECHR provided that appeal lies to a judicial authority which not only reviews the correctness of the procedure - including 'whether there are serious doubts as to the facts found' (section 43 (e)) - but may also be called upon to consider complaints of 'incorrect application of the law' and of 'misuse of discretion in the application of the law' (section 44). The Cantonal Court therefore enjoys a much more extensive power of review than the Federal Court in a public-law appeal, where jurisdiction is restricted to ensuring that a decision is not arbitrary (cf. Schubarth, Die Artikel 5 und 6 (art. 5, art. 6) der Konvention, insbesondere im Hinblick auf das schweizerische Strafprozessrecht, RDS 94/1975 I, p. 498, nos. 119-122), since the appeal which lies is not 'a mere cassation procedure' (J. Raymond, op. cit., pp. 68-69, no. 81). Moreover, where the Cantonal Cassation Division quashes a decision because there are serious doubts as to the facts found (section 43(e) MDA), it may request the municipal authority, to which it remits the case (section 52 MDA), to carry out additional investigative measures. That in itself is sufficient to show that the ultimate control by the judiciary of municipal decisions in the Canton of Vaud is in conformity with Article 6 § 1 (art. 6-1) ECHR, as interpreted in accordance with the declaration made by Switzerland. The view advanced by P. Bischofberger, who appears to argue that ultimate judicial control should cover both the law and the facts (Die Verfahrensgarantien der Europaïschen Konvention zum Schutze der Menschenrechte und Grundfreiheiten (Art. 5 und 6) (art. 5, art. 6) in ihrer Einwirkung auf das schweizerische Strafprozessrecht, Zürich thesis 1972, pp. 50-51), is not justified in view of the meaning of the Federal Council's interpretative declaration, although it would be desirable for offences of the kind at issue to be tried by a criminal court.

Moreover, the appellant did not claim that the judicial review of the instant case by the Cassation Division of the Cantonal Court was open to criticism regarding its examination of the lawfulness of the Police Board's decision of 4 September 1981." (Judgments of the Swiss Federal Court, vol. 108, Ia, pp. 313-316)

II. THE POLICE BOARD IN VAUD CANTONAL LAW

16. In the Canton of Vaud, municipalities can delegate responsibility for prosecuting and punishing minor offences to one or three municipal councillors or, where the population is over ten thousand, to a specialist civil servant or a senior police officer (section 12 of the Municipal Decisions Act of 17 November 1969 - "the 1969 Act").

17. In Lausanne the Police Board consists of a single municipal civil servant. He is a sworn official and as such "must discharge his duties in person, diligently, conscientiously and loyally" (Regulation 10 of the Local Government Staff Regulations). He can withdraw from the case of his own accord or be challenged (section 12 of the 1969 Act).

1. Powers

18. The Police Board can only impose fines (section 5 of the 1969 Act), and these cannot exceed 200 CHF for a first offence or 500 CHF for a subsequent offence. It is empowered to order the offender ("dénoncé") to pay expenses (sections 5 and 34) but has no power to award damages or costs against him (section 5).

19. In 1986, the Lausanne Police Board decided 22,761 individual cases. Traffic offences - mainly parking offences - accounted for 91% of these.

2. Procedure

20. If the Police Board considers that the facts have been established and that the available information about the personal situation of the offender is sufficient, it may take its decision without summoning the person concerned to appear before it (section 24 of the 1969 Act).

Where a hearing is held, the offender is entitled to consult the file beforehand (section 23). He normally appears in person at the hearing but may send a representative if he is expressly exempted from attending in person (section 29).

21. The procedure for inquiring into the facts is laid down in section 30, which reads as follows:

> "The municipal authority shall hear the offender and, where appropriate, the person who has laid the information against him.
>
> Such parts of the police report as concern the offender shall be made known to him or to the person representing or assisting him.
>
> If the facts are disputed, the municipal authority shall carry out the necessary verification, in particular by taking evidence from witnesses it has summoned or sends for or whom the offender brings before it; it may visit the locus.
>
> Where necessary, it shall call upon the services of an interpreter.
>
> For the rest, the municipal authority shall reach its own conclusion as to the accuracy of the facts set out in the report."

22. The Police Board's decision is delivered immediately; if convicted, the offender is informed of his right of appeal (section 31), and the Board's decision is subsequently notified to him in writing.

23. A convicted offender may apply to have the conviction set aside (opposition) if, as in the instant case, he was not summoned to appear at a hearing or was tried in absentia (section 36). In such cases the original decision ceases to have validity (section 39) and the Police Board reopens the proceedings by summoning the person concerned to a hearing.

3. Forms of appeal

24. Criminal law in the Canton of Vaud does not allow for an ordinary appeal (appel) against Police Board decisions but does make provision for two types of application to the Cassation Division of the Cantonal Court, in addition to the possibility of applying to have the decision set aside.

The first type - of which Mrs. Belilos availed herself (see paragraph 13 above) - is provided for in section 43 of the 1969 Act:

> "An application for a declaration of nullity (recours en nullité) may be made on grounds of the following procedural irregularities:
>
> (a) where the municipal authority has made a determination of fact in respect of which it had no statutory competence by reason of territorial jurisdiction or the subject-matter;
>
> (b) where process has not been properly served on the offender;
>
> (c) where some other vital procedural rule has been disregarded in such a way as to affect the impugned decision;
>
> (d) where the decision being challenged discloses omissions or inconsistencies such that the Cassation Division is unable to determine the ground of appeal;
>
> (e) where there are serious doubts as to the facts found."

In cases which come under paragraph (a) and in which prosecution of the offence is mandatory, the Cassation Division refers the case to the public prosecutor’s office (section 51, first paragraph); it declares the impugned decision to be null and void without referring the case "where prosecution of the offence is not mandatory or is clearly time-barred" (section 51, second paragraph). In the other eventualities it "shall remit the case to the municipal authority for a fresh decision" (section 52).

Section 44 provides for a second type of application, not made in the instant case, namely an appeal on points of law (recours en réforme) "on grounds of incorrect application of the law or of misuse of discretionary powers in the application of the law". If it allows the appeal, "the Cassation Division shall substitute its own decision taken on the basis of the facts established at first instance, save for any manifest errors, which it shall rectify of its own motion" (section 53).

25. When such an application or appeal is made, the Police Board forwards it without delay to the Cantonal Court together with the case file.

The file must (under section 46) contain: the police report(s); a copy of the summons, together, if necessary, with the acknowledgement of receipt of it; a copy of the decision; the envelope containing the application or appeal, if it was sent by post; possibly the other documents relating to the offence in question; and a copy of the municipal regulations applied or a copy of the administrative decision which has not been complied with. The Board may enclose "determinations" on the applications.

26. In 1986, the Vaud Cantonal Court registered twenty-eight such applications and appeals against decisions of the Lausanne Police Board. By 31 December of that year, it had rejected three of them in limine, dismissed sixteen and allowed one, remitting the case to the Police Board; the other eight were still pending.

27. A public-law appeal lies to the Federal Court against judgments of the Criminal Cassation Division of the Cantonal Court, and on such an appeal the Federal Court's power of review is restricted to ensuring that there has been no arbitrariness (see paragraph 15 above).

Five such appeals relating to decisions by the Lausanne Police Board were heard in 1986; the Federal Court declared all of them inadmissible.

III. SWITZERLAND'S DECLARATION ON THE INTERPRETATION OF ARTICLE 6 § 1 (art. 6-1) OF THE CONVENTION

1. Wording

28. On 28 November 1974, the Head of the Federal Political Department - which has since become the Federal Department of Foreign Affairs - deposited the instrument of ratification of the Convention with the Secretary General of the Council of Europe (pursuant to Article 66 § 1, third sentence) (art. 66-1). The instrument reproduced, mutatis mutandis, the wording traditionally used by Switzerland in such cases:

> "The Swiss Federal Council, having seen and considered the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, ... which was approved by the Federal Houses on 3 October 1974, declares that the Convention aforesaid is ratified, with the following reservations and interpretative declarations ...".

The reservations were made in respect of Articles 5 and 6 (art. 5, art. 6) - the first one was withdrawn in 1982 -, while the declarations related to paragraphs 1 and 3 (c) and (e) of Article 6 (art. 6-1, art. 6-3-c, art. 6-3-e).

29. Only the declaration on the interpretation of Article 6 § 1 (art. 6-1) is at issue in the instant case; it reads:

> "The Swiss Federal Council considers that the guarantee of fair trial in Article 6, paragraph 1 (art. 6-1) of the Convention, in the determination of civil rights and obligations or any criminal charge against the person in question is intended solely to

ensure ultimate control by the judiciary over the acts or decisions of the public authorities relating to such rights or obligations or the determination of such a charge."

2. Preparatory work

(a) The Federal Council's report of 9 December 1968 to the Federal Assembly

30. On 9 December 1968, the Federal Council submitted to the Federal Assembly a detailed report on the Convention (Federal Gazette, 1968, vol. II, pp. 1069-1198). In it the Federal Council stressed the need to make several reservations and also a declaration on the interpretation of Article 6 § 3 (c) and (e) (art. 6-3-c, art. 6-3-e); it did not, however, mention any need for a similar declaration in respect of Article 6 § 1 (art. 6-1).

(b) The Federal Council's supplementary report of 23 February 1972 to the Federal Assembly

31. In a supplementary report which it sent to the Federal Assembly on 23 February 1972, the Federal Council returned to the question of reservations and interpretative declarations:

"...

6. In our report of 9 December 1968 we recognised that when ratifying the Convention, Switzerland should make, in addition to the aforementioned five reservations, a declaration on the interpretation of Article 6 § 3 (c) and (e) (art. 6-3-c, art. 6-3-e), which relate to free legal assistance and the free assistance of an interpreter (FF 1868 II 1121)....

7. Since the publication of our previous report, a fresh difficulty has arisen which might lead Switzerland to make an additional reservation when ratifying the Convention. In its judgment of 16 July 1971 in the Ringeisen case, the European Court of Human Rights gave its interpretation of the concept of 'the determination of ... civil rights and obligations' in Article 6 § 1 (art. 6-1)....

The Court's tendency to give a broad meaning to the word 'civil' raises tricky problems for Switzerland, where administrative authorities determine civil-law disputes and intervene in private-law relations. In order to ensure that a wide conception of civil disputes (la contestation de caractère civil) does not have repercussions on the organisation of public administration and of the courts in the cantons, it will probably be necessary to make a reservation concerning the scope of Article 6 (art. 6) when ratifying the Convention. The wording of such a reservation will depend partly on the outcome of studies yet to be made of the subject and partly on any developments in the case-law of the Commission or the Court. We shall have an opportunity of determining our attitude to the subject in the communication we shall be sending you in due course concerning ratification of the Convention.

..." (Federal Gazette, 1972, vol. I, pp. 995-996).

The Federal Political Department communicated the supplementary report officially to the Council of Europe's Directorate of Legal Affairs.

(c) The Federal Council's communication of 4 March 1974 to the Federal Assembly

32. The communication foreshadowed in 1972 reached the Assembly on 4 March 1974. In it the Federal Council dealt, among other things, with the "effects on the system of public administration and of the courts in the cantons of the guarantee of a right of access to the courts in Article 6 (art. 6) of the Convention":

> "In our supplementary report of 23 February 1972 we noted among other things that when the Convention was being ratified, it would probably be necessary to make a reservation concerning the scope of the first sentence of Article 6 § 1 (art. 6-1), whereby ... We reserved the right to study this problem in greater detail, however, and to determine our attitude to the matter in this communication.
>
> In its judgment of 16 July 1971 in the Ringeisen case the European Court of Human Rights stated that for Article 6 § 1 (art. 6-1) of the Convention to be applicable to a case it was not necessary that both parties to the proceedings should be private persons. The wording of Article 6 § 1 (art. 6-1) was far wider. The French expression 'contestations sur des droits et obligations de caractère civil' covered all proceedings the outcome of which was decisive for private rights and obligations. The English text, 'determination of ... civil rights and obligations', confirmed this interpretation. In the Court's opinion, the character of the legislation which governed how the matter was to be determined (civil, commercial, administrative law, etc.) or of the authority which was invested with jurisdiction in the matter (ordinary court, administrative body, etc.) was therefore of little consequence.
>
> In order to assess the exact scope of this provision, it has to be asked at what stage of the domestic proceedings the requirements of Article 6 § 1 (art. 6-1) have to be satisfied. Valuable clues are given in the address one of the delegates of the European Commission of Human Rights made to the Court in the Ringeisen case. According to Mr. Fawcett, Article 6 (art. 6) of the Convention is designed only to secure ultimate judicial control of actions or decisions of public authority which affect, in particular, civil rights and obligations. This judicial control is furthermore limited: the relevant provision calls only for a fair hearing and not for a determination of the merits. In other words, it is not necessary that the administrative authorities themselves should comply with the requirements of Article 6 (art. 6). But where their decisions have the effect of confirming, modifying or annulling civil rights or obligations, there must in the whole process be a judicial element of fair hearing.
>
> ...
>
> Lastly, in criminal law, Article 345 § 1(2) of the Swiss Criminal Code provides that minor offences can be tried by an administrative authority. Furthermore, Article 369 of the same Code empowers the cantons to appoint an administrative body to try offences committed by children or adolescents. In our report of 9 December 1968 on the Convention we said that, despite these departures from the principle of separation of powers, independence and impartiality are guaranteed in the aforementioned cases in other ways. In several cantons, for instance, the administrative authorities called upon to exercise judicial functions are elected by the people and are independent of the executive. In those circumstances they can be equated with a 'tribunal' within the meaning of Article 6 § 1 (art. 6-1) of the European Convention on Human Rights. Moreover, a member of the public who is not satisfied with an administrative decision

can very often ask to have his case heard by a court under ordinary procedure. The court then gives judgment on the merits of the charge and acquits or convicts. Where, on the other hand, the decision taken by an administrative authority can be referred to a court not for a ruling on the merits but solely for review of its lawfulness (pourvoi en nullité), the question arises whether this review procedure satisfies the requirements of Article 6 (art. 6) of the Convention.

Following the interpretation given to Article 6 § 1 (art. 6-1) by the current President of the European Commission of Human Rights, we consider that that provision is intended only to ensure ultimate control by the judiciary over the acts or decisions of the public authorities. Moreover, it requires only a fair hearing and not a decision on the merits. ..." (Federal Gazette, 1974, vol. I, pp. 1030-1033).

The Federal Political Department forwarded the communication officially to the Council of Europe's Directorate of Legal Affairs.

(d) Federal Decree of 3 October 1974

33. The Federal Assembly approved the Convention - and, at the same time, the reservations and interpretative declarations - on 3 October 1974. The Federal Decree recording the fact is worded as follows:

"The Federal Assembly of the Swiss Confederation,

Having regard to Article 8 of the Constitution;

Having regard to the Federal Council's communication of 4 March 1974,

Hereby decrees:

Article 1

The following are approved:

(a) The Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, as amended by Protocol No. 3 (P3) of 6 May 1963, amending Articles 29, 30 and 34 (art. 29, art. 30, art. 34) of the Convention, and by Protocol No. 5 (P5) of 20 January 1966, amending Articles 22 and 40 (art. 22, art. 40) of the Convention, with the following reservations and declarations:

...

- Declaration on the interpretation of Article 6 § 1 (art. 6-1): [see paragraph 29 above]

..." (Official Collection of Federal Statutes, 1974, pp. 2148-2149).

PROCEEDINGS BEFORE THE COMMISSION

34. Mrs. Belilos applied to the Commission on 24 March 1983 (application no. 10328/83). She complained that she had not been tried by an independent and impartial tribunal within the meaning of Article 6 § 1 (art. 6-1) of the Convention, with full jurisdiction to determine questions both of law and of fact.

35. The Commission declared the application admissible on 8 July 1985. In its report of 7 May 1986 (made under Article 31) (art. 31), it expressed the unanimous opinion that there had been a breach of Article 6 § 1 (art. 6-1).

The full text of the Commission's opinion is reproduced as an annex to this judgment.

FINAL SUBMISSIONS TO THE COURT

36. In her supplementary memorial of 4 May 1987, the applicant requested the Court to make the following ruling:

> "I. Official notice is given that the applicant has in this instance been the victim of a violation of Article 6 § 1 (art. 6-1) of the Convention on the grounds that her dispute was not judicially decided.
>
> II. Switzerland is called upon to take all necessary measures to cancel the fine imposed upon the applicant in the decision taken by the Lausanne Police Board on 4 September 1981 and to repay the applicant the sum of 120 CHF paid by her.
>
> III. Switzerland is invited to take all necessary measures to ensure that police boards no longer have the power to make the final findings of fact in proceedings resulting in the imposition of a fine and to amend the Vaud Municipal Decisions Act of 17 November 1969 to that effect.
>
> IV. Switzerland is to pay Marlène Belilos the sum of 3,250 CHF as costs for the Vaud cantonal proceedings and the Swiss national proceedings, and 30,000 CHF as costs for the European proceedings."

37. At the hearing the Government maintained the final submissions in their memorial of 24 February 1987, in which they requested the Court:

> "A. As regards admissibility, to allow the preliminary objection and declare that, by reason of the incompatibility of the application with the international undertakings entered into by Switzerland under Article 6 § 1 (art. 6-1) of the Convention, the Court has no jurisdiction to consider the merits of the case;
>
> B. As regards the merits, to declare that Switzerland's interpretative declaration concerning Article 6 § 1 (art. 6-1) of the Convention produces the legal effects of a validly adopted reservation and that accordingly there has been no infringement of that provision as it is applicable to Switzerland."

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

38. By way of a preliminary objection, the Government argued that Mrs. Belilos's application was incompatible with the international undertakings entered into by Switzerland under Article 6 § 1 (art. 6-1) of the Convention. They relied on the interpretative declaration made when the instrument of ratification was deposited, which is worded as follows:

> "The Swiss Federal Council considers that the guarantee of fair trial in Article 6, paragraph 1 (art. 6-1) of the Convention, in the determination of civil rights and obligations or any criminal charge against the person in question is intended solely to ensure ultimate control by the judiciary over the acts or decisions of the public authorities relating to such rights or obligations or the determination of such a charge."

In their submission, the Commission should have declined to exercise jurisdiction as the application related to a right that was not recognised by the Confederation.

39. The Court will examine the nature of the declaration in issue and then, if appropriate, its validity for the purposes of Article 64 (art. 64) of the Convention, which reads as follows:

> "1. Any State may, when signing the Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article (art. 64).
>
> 2. Any reservation made under this Article (art. 64) shall contain a brief statement of the law concerned."

A. The nature of the declaration

40. The applicant contended that the declaration could not be equated with a reservation. When ratifying the Convention, Switzerland had made two "reservations" and two "interpretative declarations"; in so doing, it had adopted a terminology that had been chosen quite deliberately. A reservation resulted in the Convention's being inapplicable in respect of a particular point, whereas a declaration on the other hand was only provisional in nature, pending a decision of the Strasbourg organs. Mrs. Belilos further argued that when in 1982 the Federal Department of Foreign Affairs had announced the withdrawal of the reservation in respect of Article 5 (art. 5) it, had stated that only one reservation remained, the one in respect of the rule that hearings are to be held in public and judgments

pronounced publicly. Having made the distinction in full knowledge of the circumstances, Switzerland could not now depart from it.

41. The Commission likewise reached the conclusion that the declaration was a mere interpretative declaration which did not have the effect of a reservation (see its report, § 102); it based its view both on the wording of the declaration and on the preparatory work. The latter showed that Switzerland's intention had been to deal with the situation arising as a result of the Court's judgment of 16 July 1971 in the Ringeisen case (Series A no. 13), i.e. in respect of administrative proceedings relating to civil rights; it did not, on the other hand, provide any indication of how the declaration might be applied as a reservation in the case of criminal proceedings. More generally, the Commission considered that if a State made both reservations and interpretative declarations at the same time, the latter could only exceptionally be equated with the former.

42. In the Government's submission, on the other hand, the declaration was a "qualified" interpretative declaration. It consequently was in the nature of a reservation within the meaning of Article 2 § 1 (d) of the Vienna Convention on the Law of Treaties of 23 May 1969, which provides:

> "'Reservation' means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State."

43. The first of the considerations relied on by the Government was the purpose of the declaration. They claimed that it was to preserve proceedings which, while coming within the "civil" or "criminal" ambit of Article 6 § 1 (art. 6-1), initially took place before administrative authorities, in such a way that the court or courts to which appeal lay did not - or did not fully - review the facts. The declaration thus reflected the wish to respect the cantons' distinctive features, recognised in the Federal Constitution, with regard to procedure and the administration of justice. At the same time, the declaration was a "reaction" to the Ringeisen judgment previously cited.

This argument is closely related to the one based on the preparatory work, which the Court will consider below (see paragraph 48).

44. Another factor, in the Government's submission, was the wording used in the declaration which clearly had a restrictive character.

The Court acknowledges that the wording of the original French text of the declaration, though not altogether clear, can be understood as constituting a reservation.

45. In order to demonstrate that the declaration amounted to a reservation, the Government further relied on the fact that Switzerland's reservations and interpretative declarations went through identical processes with regard to establishing the grounds for their adoption, to their formulation and to their inclusion in the federal decree approving the Convention, which was adopted on 3 October 1974 by the Federal

Assembly (see paragraph 33 above). The same procedure had been followed when the instrument of ratification was deposited (see paragraph 28 above).

The Court does not find this argument convincing. The fact that the making of interpretative declarations coincides with the making of reservations, that is to say takes place when the Convention is signed or when the instrument of ratification is deposited (Article 64) (art. 64), reflects normal practice. It is therefore not surprising that the two sets of texts, even if they differed in their legal character, should have been incorporated in a single parliamentary instrument and subsequently in a single instrument of ratification.

46. The Government also prayed in aid the Swiss practice in respect of reservations and interpretative declarations under which the criteria for distinguishing between the two concepts were not absolute. In the event of doubt as to the real meaning of a clause in a convention (for example where there was no established case-law on a point), the Federal Council would recommend making an interpretative declaration in order, where appropriate, to change the legal effect of the clause concerned. In the instant case, Switzerland's two declarations had the same effect as reservations; they amounted to qualified declarations and not mere declarations.

Varying terminology was, the Government continued, a characteristic of the practice followed in the Convention system too. Nor, they said, was there anything surprising about that situation: international treaties had not - at least until recently - made any specific provision for the making of declarations; even today, the generic concept of a "reservation" in international law still embraced any unilateral declaration designed to preclude or modify the legal effect of certain treaty provisions in respect of the State making the reservation.

The Court cannot see how a lack of uniformity of this kind - even though it illustrates the relativity of the distinction - could in itself justify describing the declaration in issue as a reservation.

47. The Government derived an additional argument from the fact that there had been no reaction from the Secretary General of the Council of Europe or from the States Parties to the Convention.

The Secretary General had made no comment when he notified the Council of Europe member States of the reservations and interpretative declarations contained in Switzerland's instrument of ratification. Yet, so the Government maintained, it was open to him as the depositary, who had important prerogatives, to ask for clarifications and to make observations on the instruments he received, as he had shown in the case of the declaration made under Article 25 (art. 25) by the Turkish Government on 28 January 1987. As far as the reservations and interpretative declarations of Switzerland were concerned, it had, when they were in the process of formulation, made extensive enquiries of the Council of Europe's Legal

Affairs Directorate so as to ensure that there was no objection from the Secretary General.

As to the States Parties, they did not deem it necessary to ask Switzerland for explanations regarding the declaration in question and had therefore considered it acceptable as a reservation under Article 64 (art. 64) or under general international law. The Swiss Government inferred that it could in good faith take the declaration as having been tacitly accepted for the purposes of Article 64 (art. 64).

The Court does not agree with that analysis. The silence of the depositary and the Contracting States does not deprive the Convention institutions of the power to make their own assessment.

48. Lastly, the Government laid great emphasis on the preparatory work done on the declaration. They saw it as being of decisive importance, just as, they claimed, the Commission and the Committee of Ministers had done in connection with the Temeltasch application against Switzerland (no. 9116/80, report of 5 May 1982 and Resolution DH (83) 6, Decisions and Reports no. 31, pp. 138-153). They referred in particular to two documents which the Federal Council had sent to the Federal Assembly and which related to the Convention: the supplementary report of 23 February 1972 and the communication of 4 March 1974 (see paragraphs 31-32 above).

Like the Commission and the Government, the Court recognises that it is necessary to ascertain the original intention of those who drafted the declaration. In its view, the documents show that Switzerland originally contemplated making a formal reservation but subsequently opted for the term "declaration". Although the documents do not make the reasons for the change of nomenclature entirely clear, they do show that the Federal Council has always been concerned to avoid the consequences which a broad view of the right of access to the courts - a view taken in the Ringeisen judgment - would have for the system of public administration and of justice in the cantons and consequently to put forward the declaration as qualifying Switzerland’s consent to be bound by the Convention.

49. The question whether a declaration described as "interpretative" must be regarded as a "reservation" is a difficult one, particularly - in the instant case - because the Swiss Government have made both "reservations" and "interpretative declarations" in the same instrument of ratification. More generally, the Court recognises the great importance, rightly emphasised by the Government, of the legal rules applicable to reservations and interpretative declarations made by States Parties to the Convention. Only reservations are mentioned in the Convention, but several States have also (or only) made interpretative declarations, without always making a clear distinction between the two.

In order to establish the legal character of such a declaration, one must look behind the title given to it and seek to determine the substantive content. In the present case, it appears that Switzerland meant to remove

certain categories of proceedings from the ambit of Article 6 § 1 (art. 6-1) and to secure itself against an interpretation of that Article (art. 6-1) which it considered to be too broad. However, the Court must see to it that the obligations arising under the Convention are not subject to restrictions which would not satisfy the requirements of Article 64 (art. 64) as regards reservations. Accordingly, it will examine the validity of the interpretative declaration in question, as in the case of a reservation, in the context of this provision.

B. The validity of the declaration

1. The Court's jurisdiction

50. The Court's competence to determine the validity under Article 64 (art. 64) of the Convention of a reservation or, where appropriate, of an interpretative declaration has not given rise to dispute in the instant case. That the Court has jurisdiction is apparent from Articles 45 and 49 (art. 45, art. 49) of the Convention, which were cited by the Government, and from Article 19 (art. 19) and the Court's case-law (see, as the most recent authority, the Ettl and Others judgment of 23 April 1987, Series A no. 117, p. 19, § 42).

2. Compliance with Article 64 (art. 64) of the Convention

51. The Court must accordingly ascertain whether the relevant declaration by Switzerland satisfied the requirements of Article 64 (art. 64) of the Convention.

(a) Article 64 § 1 (art. 64-1)

52. Before the Commission the applicant conceded that the interpretative declaration was not a reservation of a general character, but before the Court she submitted the opposite. She now maintained that the declaration sought to remove all civil and criminal cases from the judiciary and transfer them to the executive, in disregard of a principle that was vital to any democratic society, namely the separation of powers. As "ultimate control by the judiciary" was a pretence if it did not cover the facts, such a system, she claimed, had the effect of excluding the guarantee of a fair trial, which was a cardinal rule of the Convention. Switzerland's declaration accordingly did not satisfy the basic requirements of Article 64 (art. 64), which expressly prohibited reservations of a general character and prohibited by implication those which were incompatible with the Convention.

53. The Government relied on the two criteria set forth by the Commission in its report of 5 May 1982 in the Temeltasch case and asserted that Switzerland's declaration was not of a general character.

They argued, in the first place, that it referred expressly to a specific provision of the Convention, paragraph 1 of Article 6 (art. 6-1), even if it inevitably had consequences for paragraphs 2 and 3 (art. 6-2, art. 6-3), which contained guarantees that were "constituent elements, among others, of the general notion of a fair trial" (see the Colozza judgment of 12 February 1985, Series A no. 89, p. 14, § 26).

In the second place, they argued that it was worded in a way that made it possible to determine its scope clearly and that was sufficiently precise for other States Parties and for the Convention institutions. The Federal Council's intention had been to limit the extent of the guarantee of a fair trial, in particular in cases in which an administrative authority determined a criminal charge. It had in good faith chosen the expression "ultimate control by the judiciary" to denote a review of the cassation type, initiated by means of an application for a declaration of nullity (pourvoi en nullité) and confined to questions of law, i.e. examination of the propriety of the public authority's decision from the point of view of its conformity with the law. It had thus faithfully paraphrased - and extended to the criminal aspect of Article 6 (art. 6) - the argument put forward by Mr. Fawcett on behalf of the Commission minority in the Ringeisen case. It was, moreover, the Government continued, wrong to criticise the declaration - some fifteen years after it had been made - for being general and vague, on the basis primarily of the case-law subsequently developed by the Convention institutions, especially by the Court in its judgment of 10 February 1983 in the Albert and Le Compte case (Series A no. 58). Lastly, the concept of "ultimate control by the judiciary" was not unknown to international human-rights law, as was shown by France's reservation to Article 2 of Protocol No. 7 (P7-2) to the Convention.

At the hearing before the Court the Government mentioned a third point: compatibility with the object and purpose of the Convention. They considered such compatibility to be beyond doubt in the instant case, as the declaration related only to a particular aspect - not the substance - of the right to a fair trial.

54. The Commission recognised that it was necessary to take account of two circumstances: firstly, the preparatory work which preceded ratification, from which it emerged that Switzerland wanted to restrict the concept of a fair trial to a judicial review which did not entail a full determination on the merits; secondly, the stage of development of the case-law of the Convention institutions in 1974 - the Court had not yet stated that Article 6 § 1 (art. 6-1) guaranteed the "'right to a court' ... and [to] a determination by a tribunal of the matters in dispute ..., both for questions of fact and for

questions of law" (see the Albert and Le Compte judgment previously cited, Series A no. 58, p. 16, § 29).

However, the Commission continued, the words "ultimate control by the judiciary" were ambiguous and imprecise. They created great uncertainty as to the effects of the declaration concerned on the application of paragraphs 2 and 3 of Article 6 (art. 6-2, art. 6-3), particularly as regards decisions in criminal matters by administrative authorities. In the Commission's view, the declaration appeared to have the consequence that anyone "charged with a criminal offence" was almost entirely deprived of the protection of the Convention, although there was nothing to show that this had been Switzerland's intention. At least in respect of criminal proceedings, therefore, the declaration had general, unlimited scope.

55. The Court has reached the same conclusion. By "reservation of a general character" in Article 64 (art. 64) is meant in particular a reservation couched in terms that are too vague or broad for it to be possible to determine their exact meaning and scope. While the preparatory work and the Government's explanations clearly show what the respondent State's concern was at the time of ratification, they cannot obscure the objective reality of the actual wording of the declaration. The words "ultimate control by the judiciary over the acts or decisions of the public authorities relating to [civil] rights or obligations or the determination of [a criminal] charge" do not make it possible for the scope of the undertaking by Switzerland to be ascertained exactly, in particular as to which categories of dispute are included and as to whether or not the "ultimate control by the judiciary" takes in the facts of the case. They can therefore be interpreted in different ways, whereas Article 64 § 1 (art. 64-1) requires precision and clarity. In short, they fall foul of the rule that reservations must not be of a general character.

(b) Article 64 § 2 (art. 64-2)

56. In the applicant's submission, the interpretative declaration did not comply with Article 64 § 2 (art. 64-2) either, as it did not contain "a brief statement of the law concerned". No doubt the Government would have encountered practical difficulties in drawing up a list of the cantonal and federal laws which were not compatible with Article 6 § 1 (art. 6-1) at the time, but that did not justify disregarding an express condition of the Convention.

57. The Government conceded that the interpretative declaration was not accompanied by a "brief statement of the law concerned", but they maintained that the failure to comply with that formality could not be of any consequence. They pointed to the very flexible practice in the matter which they claimed had evolved with the tacit consent of the depositary and of the other Contracting States, and they referred to the cases of Ireland (reservation in respect of Article 6 § 3 (c) (art. 6-3-c)) and Malta

(declaration of interpretation of Article 6 § 2 (art. 6-2)). Above all, they argued that Article 64 § 2 (art. 64-2) did not take account of the specific problems which faced federal States and which could prove virtually insuperable. In order to fulfil the obligation, Switzerland would have had to mention most of the provisions in the twenty-six cantonal codes of criminal procedure and in the twenty-six cantonal codes of civil procedure, and even hundreds of municipal laws and regulations. This laborious exercise would have confused the situation instead of clarifying it. In sum, compliance with the letter of Article 64 § 2 (art. 64-2) would have entailed more drawbacks than advantages and might even have given rise to serious misunderstandings about the scope of Switzerland's international undertaking. In any case, the references to the Swiss Criminal Code in the Federal Council's supplementary report of 23 February 1972 to the Federal Assembly satisfied the requirement of Article 64 § 2 (art. 64-2) at least indirectly.

58. In the Commission's view, the undeniable practical difficulties put forward by the Government could not justify the failure to comply with paragraph 2 of Article 64 (art. 64-2). The latter applied to all the States Parties without any distinction, whether they were unitary or federal and whether or not they had a unified body of procedural law. Referring to its report of 5 May 1982 in the Temeltasch case, the Commission emphasised two points. Firstly, paragraph 2 of Article 64 (art. 64-2) had, in its opinion, to be read in the light of paragraph 1 (art. 64-1), which applied only to a "law then in force" and prohibited reservations of a general character; the details that the States concerned were asked to provide helped to prevent acceptance of such reservations. Secondly, the obligation to append to the reservation a brief statement of the laws that a State wished to retain enabled the other Contracting Parties, the Convention institutions and any other interested party to acquaint themselves with such legislation. That feature was of not inconsiderable value. The scope of the rule whose application the State wished to prevent by means of a reservation or interpretative declaration was a relevant factor here, because the wider the rule's scope, the greater was the need to include a statement of the law.

59. The Court concurs on the whole with the Commission's view on this point. It would add that the "brief statement of the law concerned" both constitutes an evidential factor and contributes to legal certainty. The purpose of Article 64 § 2 (art. 64-2) is to provide a guarantee - in particular for the other Contracting Parties and the Convention institutions - that a reservation does not go beyond the provisions expressly excluded by the State concerned. This is not a purely formal requirement but a condition of substance. The omission in the instant case therefore cannot be justified even by important practical difficulties.

C. Conclusion

60. In short, the declaration in question does not satisfy two of the requirements of Article 64 (art. 64) of the Convention, with the result that it must be held to be invalid. At the same time, it is beyond doubt that Switzerland is, and regards itself as, bound by the Convention irrespective of the validity of the declaration. Moreover, the Swiss Government recognised the Court's competence to determine the latter issue, which they argued before it. The Government's preliminary objection must therefore be rejected.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 (art. 6-1)

61. The applicant claimed to be the victim of a violation of Article 6 § 1 (art. 6-1) of the Convention, which reads:

> "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 within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In her view, the Lausanne Police Board was not an "independent and impartial tribunal"; furthermore, neither the Criminal Cassation Division of the Vaud Cantonal Court nor the Federal Court had provided sufficiently extensive "ultimate control by the judiciary", as they were unable to reconsider the findings of fact which had been made by a purely administrative body, the Police Board.

62. The Court notes that those appearing before it did not dispute the applicability of Article 6 § 1 (art. 6-1) in the instant case, apart from the effect of Switzerland's interpretative declaration. On the basis of the criteria which have been established in its case-law, it likewise considers that the offence of which the applicant was accused was a "criminal" one (see, mutatis mutandis, the Öztürk judgment of 21 February 1984, Series A no. 73, pp. 18-21, §§ 50-54).

1. The Lausanne Police Board

63. Mrs. Belilos complained that the Police Board was subordinate to the police authorities: consisting as it did of a single police official, it could not but take the police authorities' side.

The Commission noted in its opinion merely that the applicant had been fined by an administrative authority which made the final findings of fact.

The Government did not challenge that but argued that the applicant nonetheless received a fair trial. In the first place, the municipal official had in practice a large measure of independence in the execution of his duties, and Mrs. Belilos had never claimed, even by implication, that he was not impartial. Furthermore, the proceedings before him satisfied the essential requirements of Article 6 § 1 (art. 6-1): a defendant could ask for inquiries to be made into the facts, and Mrs. Belilos had successfully availed herself of that possibility; the Board always considered the evidence and had only limited powers of punishment. Lastly, its decisions were not entered in the criminal records.

64. According to the Court's case-law, a "tribunal" is characterised in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner (see, as the most recent authority, the judgment of 30 November 1987 in the case of H v Belgium, Series A no. 127, p. 34, § 50). It must also satisfy a series of further requirements - independence, in particular of the executive; impartiality; duration of its members' terms of office; guarantees afforded by its procedure - several of which appear in the text of Article 6 § 1 (art. 6-1) itself (see, inter alia, the Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 24, § 55).

65. The 1969 Act describes the Police Board as a "municipal authority". As to the Federal Court, its judgment of 2 November 1982 mentions "administrative authorities" (see paragraph 15 above), an expression the Government adopted before the European Commission of Human Rights. Even if such terms do not appear to be decisive, they provide an important indication as to the nature of the body in question.

66. However, the Police Board is given a judicial function in Vaud law and the proceedings before it are such as to enable the accused to present his defence. Its single member is appointed by the municipality, but that is not sufficient to cast doubt on the independence and impartiality of the person concerned, especially as in many Contracting States it is the executive which appoints judges.

The appointed member, who is a lawyer from police headquarters, is a municipal civil servant but sits in a personal capacity and is not subject to orders in the exercise of his powers; he takes a different oath from the one taken by policemen, although the requirement of independence does not appear in the text of it; in principle he cannot be dismissed during his term of office, which lasts four years. Moreover, his personal impartiality has not been called into question in the instant case.

67. Nonetheless, a number of considerations relating to the functions exercised and to internal organisation are relevant too; even appearances may be important (see, mutatis mutandis, the De Cubber judgment of 26 October 1984, Series A no. 86, p. 14, § 26). In Lausanne the member of the

Police Board is a senior civil servant who is liable to return to other departmental duties. The ordinary citizen will tend to see him as a member of the police force subordinate to his superiors and loyal to his colleagues. A situation of this kind may undermine the confidence which must be inspired by the courts in a democratic society.

In short, the applicant could legitimately have doubts as to the independence and organisational impartiality of the Police Board, which accordingly did not satisfy the requirements of Article 6 § 1 (art. 6-1) in this respect.

2. Available forms of appeal

68. In its judgment of 21 February 1984 in the Öztürk case, the Court held:

> "Having regard to the large number of minor offences, notably in the sphere of road traffic, a Contracting State may have good cause for relieving its courts of the task of their prosecution and punishment. Conferring the prosecution and punishment of minor offences on administrative authorities is not inconsistent with the Convention provided that the person concerned is enabled to take any decision thus made against him before a tribunal that does offer the guarantees of Article 6 (art. 6)." (Series A no. 73, pp. 21-22, § 58; see also the Lutz judgment of 25 August 1987, Series A no. 123, p. 24, § 57)

These considerations apply in the instant case too. That being so, the Court must satisfy itself that the available forms of appeal made it possible to remedy the deficiencies noted in the proceedings at first instance.

(a) The Criminal Cassation Division of the Vaud Cantonal Court

69. Mrs. Belilos applied to the Criminal Cassation Division of the Vaud Cantonal Court for a declaration of nullity under section 43 of the 1969 Act (see paragraph 13 above) but she claimed that she had not been able to bring her case before a court with unlimited jurisdiction and, in particular, with power to review the facts and hear witnesses. The Commission took the same view.

In the Government’s submission, however, the judicial safeguards at cantonal level, looked at as a whole, went appreciably beyond mere review of the cassation type, notwithstanding that there was no straightforward transfer of jurisdiction over questions of fact; they were tantamount in practice to those afforded by a full-scale appeal. Firstly, the applicant had not availed herself of the appeal on points of law (recours en réforme) that she could have lodged "on grounds of incorrect application of the law or of misuse of discretionary powers in the application of the law" (section 44 of the 1969 Act - see paragraph 24 above). From this the Government inferred that she had not had any ground for complaint against the Police Board. Further, the Criminal Cassation Division was empowered - and even obliged, if there were "serious doubts" as to the facts (such as the

applicant's participation in the unauthorised demonstration) - to refer the case back to the Police Board with a request that it should make further investigations (sections 43 and 52 of the 1969 Act - see paragraph 24 above).

70. The remedy of an appeal on points of law is not relevant, since, as the Government noted, it was not available for complaints such as the applicant's.

As to the Criminal Cassation Division, regard must be had to its judgment of 25 November 1981 (see paragraph 13 above). In it the court cited the Federal Council's communication of 4 March 1974 to the Federal Assembly, which referred to the case where "the decision taken by an administrative authority can be referred to a court not for a ruling on the merits but solely for review of its lawfulness (pourvoi en nullité)". It also acknowledged that the proceedings before it included neither oral argument nor the taking of evidence by, for example, hearing witnesses. As was moreover indicated by the Federal Court in its judgment of 2 November 1982, "It does not ... have full competence to re-examine the facts" (see paragraph 15 above). These various factors lead to the conclusion that the jurisdiction of the Criminal Cassation Division of the Vaud Cantonal Court was not in the instant case sufficient for the purposes of Article 6 § 1 (art. 6-1) (see, inter alia, the Albert and Le Compte judgment previously cited, Series A no. 58, p. 16, § 29).

(b) The Federal Court

71. In the applicant's view, the Federal Court could not remedy the deficiency at the municipal and cantonal levels, because when hearing a public-law appeal (the only one available in the instant case), it did not re-examine the questions of fact or of law, as its power was limited to ensuring that there had been no arbitrariness.

The Government recognised that Mrs. Belilos had not had full judicial review of the issues of fact at this stage either. The Commission shared that view.

72. The Court has reached the same conclusion. In this connection, it takes account of the judgment given in the instant case on 2 November 1982 by the Federal Court (see paragraph 15 above). That court noted, after recapitulating the powers which the Cassation Division of the Vaud Cantonal Court has under sections 43 (e) and 44 of the 1969 Act (see paragraph 24 above): "The Cantonal Court ... enjoys a much more extensive power of review than the Federal Court in a public-law appeal, where jurisdiction is restricted to ensuring that a decision is not arbitrary." The Court has already noted, however, that the review provided at the level of the Cantonal Court was inadequate; so it was not possible subsequently to remedy the shortcomings found at the level of the Police Board.

73. In conclusion, there was a violation of Article 6 § 1 (art. 6-1).

III. APPLICATION OF ARTICLE 50 (art. 50)

74. By Article 50 (art. 50) of the Convention,

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

In her claims under this provision the applicant sought cancellation and refund of the fine, amendment of the Vaud Municipal Decisions Act and reimbursement of costs and expenses.

A. Cancellation and refund of the fine

75. Mrs. Belilos sought in the first place an order that Switzerland should take "all the necessary measures to cancel the fine imposed ... on 4 September 1981 by the Police Board of the Municipality of Lausanne" and to reimburse her the relevant amount, that is to say 120 CHF.

The Delegate of the Commission considered that restitution should be ordered. As for the Government, they noted that the Court's judgments did not have the effect of quashing the decisions of domestic courts, and added that the correctness of the facts and the reasonableness of the fine were not in issue before the Convention institutions.

76. The Court notes that the Convention does not give it jurisdiction to direct the Swiss State - even supposing that the latter could itself comply with such a direction - to cancel the applicant's conviction and sentence (see, mutatis mutandis, the Le Compte, Van Leuven and De Meyere judgment of 18 October 1982, Series A no. 54, p. 7, § 13).

Furthermore, it cannot speculate as to what the outcome of the proceedings in question would have been had the violation of the Convention not occurred.

B. Legislative amendment

77. The applicant also requested the Court to ask Switzerland to "take all the necessary measures to ensure that the police boards no longer have the competence to make a final determination of the facts in proceedings resulting in the imposition of a fine, the Vaud Municipal Decisions Act of 17 November 1969 being altered to that effect".

Neither the Agent of the Government nor the Delegate of the Commission made any observations on this matter.

78. The Court notes that the Convention does not empower it to order Switzerland to alter its legislation; the Court's judgment leaves to the State

the choice of the means to be used in its domestic legal system to give effect to its obligation under Article 53 (art. 53) (see, mutatis mutandis, the Marckx judgment of 13 June 1979, Series A no. 31, p. 25, § 58, and the F v. Switzerland judgment of 18 December 1987, Series A no. 128, p. 19, § 43).

C. Costs and expenses

79. Lastly, Mrs. Belilos claimed reimbursement of costs and expenses incurred in the proceedings before the Swiss courts and lawyer's fees and expenses in respect of the proceedings before the Convention institutions.

An award may be made under Article 50 (art. 50) in respect of costs and expenses that (a) were actually and necessarily incurred by the injured party in order to seek, through the domestic legal system, prevention or rectification of a violation, to have the same established by the Commission and later by the Court and to obtain redress therefor; and (b) are reasonable as to quantum (see, among other authorities, the Olsson judgment of 24 March 1988, Series A no. 130, p. 43, § 104).

1. Costs incurred in the national proceedings

80. The applicant's claim related to court fees which the domestic courts required her to pay and to lawyer's fees, a total of 3,250 CHF.

As the Government made no objection and the Delegate of the Commission did not make any comment, Switzerland should reimburse the applicant 3,250 CHF.

2. Costs incurred in the European proceedings

81. Mrs. Belilos claimed 25,000 CHF in expenses for her lawyer in respect of the European proceedings. She said that this claim was warranted by the importance of the case and the research he had had to undertake.

The Government objected that she had not provided any concrete evidence that such an amount had actually been incurred; they also considered the sum to be too large, in view of the circumstances in which the proceedings took place. They agreed, however, to an award of a "lump sum" of 8,000 CHF, from which the sums received in legal aid would fall to be deducted.

The Court notes, like the Delegate of the Commission, that the applicant did not produce details, with supporting documents, of the expenses not covered by legal aid. For this reason and having regard to the Government's observations, the Court awards Mrs. Belilos the uncontested sum of 8,000 CHF, less the 8,822 FF paid by the Council of Europe.

82. The applicant put the amount of her own expenses not covered by legal aid (travel within Switzerland, telephone and photocopies) at 3,000 CHF.

The Government challenged the accuracy of this figure, as it was unsupported by any further particulars. They said, however, that in a spirit of conciliation they were willing to pay 300 CHF.

The Delegate of the Commission did not express any opinion.

The Court considers it to be equitable that Switzerland should pay the applicant 500 CHF for her own out-of-pocket expenses.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Rejects the Government's preliminary objection;

2. Holds that there has been a breach of Article 6 § 1 (art. 6-1) of the Convention;

3. Holds that the respondent State is to pay the applicant in respect of costs and expenses the sum of 11.750 (eleven thousand seven hundred and fifty) Swiss francs, less 8,822 (eight thousand eight hundred and twenty-two) French francs to be converted into Swiss francs at the rate applicable on the day on which this judgment is delivered;

4. Rejects the remainder of the claim for just satisfaction.

Done in English and in French and delivered at a public hearing in the Human Rights Building, Strasbourg, on 29 April 1988.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 § 2 (art. 51-2) of the Convention and Rule 52 § 2 of the Rules of Court, the separate concurring opinions of Mr. Pinheiro Farinha and Mr. De Meyer are annexed to this judgment.

R. R.
M.-A. E.

CONCURRING OPINION OF JUDGE PINHEIRO FARINHA

(Translation)

1. I concur in the result.

2. I cannot endorse the view that Switzerland's declaration of interpretation of Article 6 (art. 6) of the Convention "can be understood as constituting a reservation".

Switzerland deposited reservations and declarations on the same day, in a single instrument of ratification. I do not think that it wished to give the same weight and intent to both categories. It did two different things.

CONCURRING OPINION OF JUDGE DE MEYER

(Translation)

I should like briefly to explain my vote as regards the preliminary objection, which I, like all my colleagues, reject.

The object and purpose of the European Convention on Human Rights is not to create, but to recognise, rights which must be respected and protected even in the absence of any instrument of positive law.

It is difficult to see how reservations can be accepted in respect of provisions recognising rights of this kind. It may even be thought that such reservations, and the provisions permitting them, are incompatible with the ius cogens and therefore null and void, unless they relate only to arrangements for implementation, without impairing the actual substance of the rights in question.

This is the only spirit in which Article 64 (art. 64) of the Convention should be interpreted and applied; at most, that Article (art. 64) may allow a State to give itself, as a purely temporary measure, "at the time of" the signature or ratification of the Convention, a brief space in which to bring into line any laws "then in force in its territory" which do not yet sufficiently respect and protect the fundamental rights recognised in the Convention.