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

CASE OF AMANN v. SWITZERLAND

(Application no. 27798/95)

JUDGMENT

STRASBOURG

16 February 2000

In the case of Amann v. Switzerland,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), as amended by Protocol No. 11[1], and the relevant provisions of the Rules of Court[2], as a Grand Chamber composed of the following judges:

Mrs E. PALM, *President*,
Mr L. WILDHABER,
Mr L. FERRARI BRAVO,
Mr GAUKUR JÖRUNDSSON,
Mr L. CAFLISCH,
Mr I. CABRAL BARRETO,
Mr J.-P. COSTA,
Mr W. FUHRMANN,
Mr K. JUNGWIERT,
Mr M. FISCHBACH,
Mr B. ZUPANČIČ,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mrs W. THOMASSEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS,
Mr K. TRAJA,

and also of Mr M. DE SALVIA, *Registrar*,

Having deliberated in private on 30 September 1999 and 12 January 2000,

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") on 2 November 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 27798/95) against the Swiss Confederation lodged with the Commission under former Article 25 by a Swiss national, Mr Hermann Amann, on 27 June 1995. Having been designated before the Commission by the initials H.A., the applicant subsequently agreed to the disclosure of his name.

1-2. *Note by the Registry*. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

The Commission's request referred to former Articles 44 and 48 and to the declaration whereby Switzerland recognised the compulsory jurisdiction of the Court (former Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 8 and 13 of the Convention.

2. In accordance with the provisions of Article 5 § 4 of Protocol No. 11 taken together with Rules 100 § 1 and 24 § 6 of the Rules of Court, a panel of the Grand Chamber decided on 14 January 1999 that the case would be examined by the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr L. Wildhaber, the judge elected in respect of Switzerland and President of the Court (Articles 27 §§ 2 and 3 of the Convention and Rule 24 § 3), Mrs E. Palm, Vice-President of the Court, and Mr J.-P. Costa and Mr M. Fischbach, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr L. Ferrari Bravo, Mr Gaukur Jörundsson, Mr I. Cabral Barreto, Mr W. Fuhrmann, Mr K. Jungwiert, Mr B. Zupančič, Mrs N. Vajić, Mr J. Hedigan, Mrs W. Thomassen, Mrs M. Tsatsa-Nikolovska, Mr T. Panţîru, Mr E. Levits and Mr K. Traja (Rule 24 § 3).

3. Before the Court the applicant was represented by Mr L.A. Minelli, of the Zürich Bar, who was given leave by the President of the Grand Chamber, Mrs Palm, to use the German language (Rule 34 § 3). The Swiss Government ("the Government") were represented by their Agent, Mr P. Boillat, Head of the International Affairs Division, Federal Office of Justice.

4. After consulting the Agent of the Government and the applicant's lawyer, the Grand Chamber decided that it was not necessary to hold a hearing.

5. The Registrar received the Government's memorial and documents on 15 and 22 April and the applicant's memorial and documents on 11 May 1999, and the Government's and applicant's memorials and observations in reply on 10 and 14 June 1999 respectively.

6. As Mr Panţîru was unable to attend deliberations on 12 January 2000, Mr L. Caflisch, substitute judge, replaced him as a member of the Grand Chamber (Rule 24 § 5 (b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant, who was born in 1940, is a businessman living in Switzerland. In the early 1980s he imported depilatory appliances into Switzerland which he advertised in magazines.

8. On 12 October 1981 a woman telephoned the applicant from the former Soviet embassy in Berne to order a "Perma Tweez" depilatory appliance.

9. That telephone call was intercepted by the Federal Public Prosecutor's Office (*Bundesanwaltschaft* – "the Public Prosecutor's Office"), which then requested the Intelligence Service of the police of the Canton of Zürich to carry out an investigation into the applicant and the goods he sold.

10. The report drawn up by the police of the Canton of Zürich in December 1981 stated that the applicant, who had been registered in the Commercial Registry since 1973, was in the aerosols business. It stated that "Perma Tweez" was a battery-operated depilatory appliance; a leaflet describing the appliance was appended to the report.

11. On 24 December 1981 the Public Prosecutor's Office drew up a card on the applicant for its national security card index on the basis of the particulars provided by the police of the Canton of Zürich.

12. In 1990 the public learned of the existence of the card index being kept by the Public Prosecutor's Office and many people, including the applicant, asked to consult their card.

13. Various laws on accessing and processing the Confederation's documents were then enacted.

14. On 12 September 1990 the special officer in charge of the Confederation's national security documents ("the special officer") sent the applicant, at his request, a photocopy of his card.

15. The applicant's card, which was numbered (1153 : 0) 614 and on which two passages had been blue-pencilled ..., contained the following information:

> "from the Zürich Intelligence Service: A. identified as a contact with the Russian embassy according to ... . A. does business of various kinds with the [A.] company. Appendices: extract from the Commercial Registry and leaflet. ..."

16. As soon as he received his card, the applicant asked the Ombudsman at the Public Prosecutor's Office to disclose the blue-pencilled passages.

17. On 9 October 1990 the Ombudsman replied that the censored passage at the end of the card rightly concealed the initials of the federal police officers who had obtained the information on the card. The other censored passage related to a technical surveillance measure ordered against a third party; the Ombudsman stated that he would be recommending that

the special officer disclose that information, since – in his view – the applicant's interest prevailed over the public interest in keeping it secret.

18. On 19 April 1991 the special officer decided, on the basis of Article 5 § 1 of the Order of 5 March 1990 on the Processing of Federal National Security Documents, that the initials at the end of the card could not be disclosed. He also considered that the other censored passage contained counter-intelligence which, pursuant to Article 5 § 3 (a) of the Order, should not be disclosed. On the basis of those considerations, the disclosure of the applicant's card was extended to one word ("report"):

> "from the Zürich Intelligence Service: A. identified as a contact with the Russian embassy according to report ... A. does business of various kinds with the [A.] company. Appendices: extract from the Commercial Registry and leaflet. ..."

19. On 26 October 1991 the applicant filed a request for compensation with the Federal Department of Finance. His request was refused on 28 January 1992.

20. On 9 March 1992 the applicant filed an administrative-law action with the Federal Court claiming compensation from the Confederation of 5,000 Swiss francs for the unlawful entry of his particulars in the card index kept by the Public Prosecutor's Office. He also requested that his file and card be sent immediately to the Federal Archives with a prohibition on making any copies and that they be ordered to store the information under lock and key and not disclose any of it without his agreement.

21. On being invited to submit its written observations, the Confederation stated, in its memorial of 26 May 1992, that according to the information provided by the Public Prosecutor's Office and the special officer the record of the surveillance was no longer in the federal police's files. It pointed out in that connection that, pursuant to section 66(1 *ter*) of the Federal Criminal Procedure Act ("FCPA"), documents which were no longer necessary had to be destroyed ("*Das Protokoll der technischen Ueberwachung ist gemäss Auskunft der Bundesanwaltschaft und des Sonderbeauftragten ... in den Akten der Bundespolizei nicht mehr vorhanden. In diesem Zusammenhang ist anzumerken, dass nicht mehr benötigte Akten gemäss Art. 66 Abs. 1ter BStP ... vernichtet werden müssen*").

22. The Federal Court held hearings on 27 October 1993 and 14 September 1994.

The applicant's lawyer pointed out that the case number of the card, namely (1153 : 0) 614, was a code meaning "communist country" (1), "Soviet Union" (153), "espionage established" (0) and "various contacts with the Eastern bloc" (614).

The Confederation's representative stated that where someone (*jemand*) at the former Soviet embassy was under surveillance, on every telephone call both parties to the conversation were identified, a card drawn up on them and a telephone monitoring report (*Telefon-Abhör-Bericht*) made. In

that connection she stated that most of the reports had been destroyed and that those which had not been were now stored in bags; the intention had been to destroy them as well, but when the post of special officer had been instituted everything had had to be maintained "in its present state". She went on to state that she did not know whether the telephone monitoring report in respect of the applicant had or had not been destroyed. According to information she had received from the special officer, the reports had not been sorted and it would require about five people and one year's work to examine the contents of all the bags still in existence.

23. In a judgment of 14 September 1994, which was served on 25 January 1995, the Federal Court dismissed all the applicant's claims.

24. Regarding the issue whether there was a legal basis for the measures complained of, the Federal Court referred first to section 17(3) FCPA and Article 1 of the Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office. However, it considered it unnecessary to examine whether those provisions could have provided a lawful basis for the alleged infringement of the applicant's personality rights, since one of the conditions for awarding compensation had not been met.

25. The court then referred to sections 66 et seq., and particularly section 72 FCPA on the monitoring of telephone communications and postal correspondence, and to Articles 265 et seq. of the Criminal Code, which govern "crimes or major offences against the State," and reiterated that information could lawfully be gathered – even before a prosecution was brought – in order to prevent an offence being committed against the State or national security if there was evidence that such an offence was being prepared.

26. In that connection the Federal Court found:

> "... a card was drawn up on the plaintiff in connection with the then monitoring of telephone communications with the Soviet embassy for counter-intelligence reasons. As he had contacts with a male or female employee of the Soviet embassy and it was not immediately clear that the 'Perma Tweez' appliance which he sold was a harmless depilatory instrument, the authorities acted correctly in investigating his identity, his circumstances and the 'Perma Tweez' appliance in question and recording the result."

27. The Federal Court held, however, that it did not have to rule on whether those provisions, particularly section 66(1 *ter*) FCPA, allowed the information thus obtained to be kept after it had become apparent that no criminal offence was being prepared ("*Fraglich ist, ob die Aufzeichnungen weiter aufbewahrt werden durften, nachdem sich offenbar herausgestellt hatte, dass keine strafbare Handlung vorbereitet wurde*"), since the applicant had not suffered a serious infringement of his personality rights.

28. In that connection the Federal Court reiterated that, pursuant to section 6(2) of the Federal Liability Act of 14 March 1958, the Swiss Confederation had a duty to pay compensation in cases of serious

infringement of personality rights, but considered that in this case that condition had not been met. The Federal Court held that the mere fact that the applicant had been named in the file as a "contact with the Russian embassy" could hardly be considered as an infringement of his personality rights. Moreover, even if part of the case number meant "espionage established", there was nothing to indicate that the authorities had considered the applicant to be a spy and although the expression "contact with the Russian embassy" could conceivably imply that the applicant had effectively had regular contact with the embassy, his card had to be seen, not in isolation, but in the wider context of the card index as a whole and the other circumstances of the case; in particular, the fact that no other entry had been made on his card suggested that the authorities did not suspect the applicant of having illegal contacts with the embassy. Furthermore, it could not be presumed that the applicant had been subject to surveillance on other occasions or that the recorded information had been disclosed to third parties. Taken as a whole, the applicant's file thus appeared to be of minor importance and there was nothing to indicate that it had been used for other purposes or unlawfully disclosed.

29. Lastly, the Federal Court held that the applicant's administrative-law action, which he had filed with it on 9 March 1992, was an "effective remedy" within the meaning of Article 13 of the Convention. It also pointed out that the applicant could have instituted proceedings challenging certain data in the Public Prosecutor's card index and requesting that they be amended. In that connection the Federal Court referred to, *inter alia*, the Federal Council's Directives of 16 March 1981 applicable to the Processing of Personal Data in the Federal Administration (section 44), to the Federal Decree of 9 October 1992 on the Consultation of Documents of the Federal Public Prosecutor's Office (Article 7 § 1) and to the Federal Council's Order of 20 January 1993 on the Consultation of Documents of the Federal Public Prosecutor's Office (Article 11 § 1).

30. In 1996 the applicant's card was removed from the card index and transferred to the Federal Archives where it cannot be consulted for fifty years.

II. RELEVANT DOMESTIC LAW

A. The Federal Constitution

31. The relevant provisions of the Federal Constitution in force at the material time were worded as follows:

Article 102

"The powers and duties of the Federal Council, as referred to in the present Constitution, are the following, among others:

...

9. It shall ensure that Switzerland's external security is protected and its independence and neutrality maintained;

10. It shall ensure that the Confederation's internal security is protected and that peace and order are maintained;

..."

B. The Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office

32. The relevant provisions of the Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office are worded as follows:

Article 1

"The Police Service of the Federal Public Prosecutor's Office (Federal Police) shall provide an investigation and information service in the interests of the Confederation's internal and external security. That service shall comprise:

1. The surveillance and prevention of acts liable to endanger the Confederation's internal or external security (*police politique*);

2. Police investigations in the prosecution of offences against the internal or external security of the Confederation (*police judiciaire*)."

C. The Federal Criminal Procedure Act

33. The relevant provisions of the Federal Criminal Procedure Act in force at the material time were worded as follows:

Section 17

"…

3. The Federal Public Prosecutor's Office shall be provided with the personnel necessary to enable it to run a uniform investigation and information service in the interests of the Confederation's internal and external security. The Public Prosecutor's Office shall, as a general rule, act in concert with the relevant police authorities of the cantons. It shall in each case inform those police authorities of the results of its

investigations as soon as the aim of and stage reached in the proceedings make it possible to do so."

Section 66

"1. The investigating judge may order monitoring of the accused's or suspect's postal correspondence and telephone and telegraphic telecommunications if

(a) the criminal proceedings concern a crime or major offence whose seriousness or particular nature justifies intervention or a punishable offence committed by means of the telephone; and if

(b) specific facts cause the person who is to be monitored to be suspected of being a principal or accessory in the commission of the offence; and if

(c) without interception, the necessary investigations would be significantly more difficult to conduct or if other investigative measures have produced no results.

1 *bis*. Where the conditions justifying the monitoring of the accused or suspect are satisfied, third parties may also be monitored if specific facts give rise to the presumption that they are receiving or imparting information intended for the accused or suspect or sent by him ... The telephone connection of third parties may be monitored at any time if there are reasons to suspect that it is being used by the accused.

1 *ter*. Recordings which are not needed for the conduct of an investigation shall be kept in a separate place, under lock and key, and shall be destroyed at the end of the proceedings."

Section 66 *bis*

"1. Within twenty-four hours of his decision, the investigating judge shall submit a copy of it, accompanied by the file and a brief statement of his reasons, for approval by the President of the Indictment Division.

2. The decision shall remain in force for not more than six months; the investigating judge may extend its validity for one or more further periods of six months. The order extending its validity, accompanied by the file and the statement of reasons, must be submitted, not later than ten days before expiry of the time-limit, for approval by the President of the Indictment Division.

3. The investigating judge shall discontinue the monitoring as soon as it becomes unnecessary, or immediately if his decision is rescinded."

Section 66 *ter*

"1. The President of the Indictment Division shall scrutinise the decision in the light of the statement of reasons and the file. Where he finds that there has been a breach of federal law, including any abuse of a discretionary power, he shall rescind the decision.

2. He may authorise monitoring provisionally; in that case, he shall lay down a time-limit within which the investigating judge must justify the measure, either by adding any relevant material to the file or orally."

Section 66 *quater*

"1. The procedure shall be kept secret even from the person concerned. The President of the Indictment Division shall give brief reasons for his decision and notify the investigating judge thereof within five days of the date when the monitoring began or, where the period of validity has been extended, before the further period begins.

2. The President of the Indictment Division shall ensure that the interception measures are discontinued on expiry of the time-limit."

Section 72

"1. Before the opening of a preliminary investigation the Principal Public Prosecutor may order interception of postal correspondence and telephone and telegraphic communications and prescribe the use of technical appliances...

2. He may also order those measures in order to prevent the commission of a punishable offence justifying such intervention where particular circumstances give rise to the presumption that such an offence is being prepared.

3. Sections 66 to 66 *quater* shall be applicable by analogy."

D. Legislation on the processing and consultation of the Confederation's documents

34. The relevant provisions of the Federal Council's Directives of 16 March 1981 applicable to the Processing of Personal Data in the Federal Administration are worded as follows:

4 General principles

41 Principles governing data processing

"411. There must be a legal basis for the processing of personal data.

412. Personal data may be processed only for very specific purposes. The data and technique used to process them must be appropriate and necessary to the performance of the task to be carried out.

413. Inaccurate or incomplete data must be rectified having regard to the purpose of the processing.

414. Data which are of no foreseeable further use or which have evidently been processed illegally must be destroyed.

The obligation to store them in the Federal Archives is reserved.

..."

43 Information

"431. As regards personal data files the federal offices and other administrative units having the same status must take the necessary measures to ensure that they can supply information on the legal basis and aim of the files, the nature of the processed data and the lawful recipients thereof to anyone requesting the same.

432. On request, they must indicate in a comprehensible manner to anyone who has disclosed his identity whether – and which – data on him from a particular file have been processed.

..."

44 Rectification or destruction following a request

"If it emerges, on a request, that the data on the person making the request are inaccurate or incomplete, or inappropriate to the purpose for which they have been recorded, or that processing is illegal for another reason, the organ in question must rectify or destroy such data immediately, and at the latest when the file is next accessed."

35. The relevant provisions of the Federal Council's Order of 5 March 1990 on the Processing of Federal National Security Documents are worded as follows:

Article 1

"1. The present Order shall guarantee that persons in respect of whom the federal police possess documents compiled on grounds of national security can defend their personality rights without hindering the performance of national security tasks.

2. Federal documents compiled on grounds of national security shall be placed in the custody of a special officer..."

Article 4

"1. The special officer shall have custody of all documents belonging to the Police Service of the Federal Public Prosecutor's Office.

2. He shall then sort the documents and withdraw those which serve no further purpose..."

Article 5

"1. The special officer shall allow applicants to consult their cards by sending them a photocopy thereof.

2. He shall conceal data relating to persons who have processed the cards and to foreign intelligence and security services.

3. Furthermore, he may refuse or restrict the consultation if it

(a) reveals details of investigative procedures in progress or of knowledge relating to the fight against terrorism, counter-intelligence or the fight against organised crime;

...”

Article 13

“1. The ombudsman appointed by the Federal Council shall examine, at the request of the person concerned, whether the present Order has been complied with.

…”

Article 14

“1. Anyone claiming that his request to consult his card has not been dealt with in accordance with the present Order may contact the ombudsman within thirty days.

2. If the ombudsman considers that the Order has been complied with, he shall inform the applicant accordingly. The applicant may lodge an appeal with the Federal Council within thirty days of receiving the ombudsman’s decision.

3. If the ombudsman considers that the Order has not been complied with, he shall inform the special officer and the applicant accordingly. The special officer shall then give a fresh decision, which is subject to appeal.”

36. The relevant provisions of the Federal Decree of 9 October 1992 on the Consultation of Documents of the Federal Public Prosecutor’s Office provide:

Article 4

“1. Authorisation to consult documents shall be granted to persons who submit a prima facie case that they have sustained pecuniary or non-pecuniary damage in connection with information transpiring from documents held by the Police Service or with acts by officers of the Federal Public Prosecutor’s Office.

…”

Article 7

“1. The special officer shall sort the documents placed in his custody and eliminate those which are no longer necessary for national security and are no longer the subject of a consultation process.

2. Documents relating to criminal proceedings shall be eliminated if

(a) the time-limit for prosecuting the offence has expired following a stay of the proceedings;

(b) the proceedings have been closed by an enforceable judgment.

3. The eliminated documents shall be stored in the Federal Archives. They can no longer be consulted by the authorities and access to them shall be prohibited for fifty years."

37. The relevant provisions of the Federal Council's Order of 20 January 1993 on the Consultation of Documents of the Federal Public Prosecutor's Office are worded as follows:

Article 11

"1. A person who contests the accuracy of certain data may request that an appropriate annotation be marked on the documents or appended thereto.

2. Documents which are manifestly erroneous shall be rectified at the request of the person concerned.

..."

E. The Parliamentary Commission of Inquiry set up to investigate the so-called "card index" affair

38. A Parliamentary Commission of Inquiry ("PCI") was set up to investigate the so-called "card index" affair. In its report published in the Federal Gazette (*Feuille fédérale* (FF) 1990, I, pp. 593 et seq.) it noted, among other things, in connection with the monitoring of telephone conversations (pp. 759 and 760):

"According to various sources, a number of people feared that their telephone conversations were being monitored for political reasons. The PCI has conducted a thorough examination of the technical surveillance measures ordered by the Federal Public Prosecutor's Office. In the course of that examination it requested from the Federal Public Prosecutor's Office a full and detailed list of the persons whose telephones were tapped and the telephone connections which were monitored; that list was then compared with the list requested independently from the Post, Telecommunications and Telegraph Office. The PCI was then able to satisfy itself, partly with the help of certain documents and also following an interview with the President of the Indictment Division of the Federal Court, that there were no differences between the lists drawn up by the authorities ordering the telephone tapping and the authorities implementing those orders.

...

The federal investigating judge and, before the preliminary investigation begins, the Federal Public Prosecutor have power to order a surveillance measure. A decision taken to this effect is valid for no more than six months but may be extended if

necessary. It requires in all cases the approval of the President of the Indictment Division of the Federal Court. That approval procedure has been considerably formalised over recent years and is now applied by means of a pre-printed form. The PCI noted that all decisions had been submitted to the President of the Indictment Division and that he had approved all of them without exception...”

PROCEEDINGS BEFORE THE COMMISSION

39. Mr Amann applied to the Commission on 27 June 1995. Relying on Articles 8 and 13 of the Convention, he complained that a telephone call he had received had been intercepted, that the Public Prosecutor’s Office had filled in a card on him and kept it in the resulting federal card index and that he had had no effective remedy in that connection.

40. The Commission (First Chamber) declared the application (no. 27798/95) admissible on 3 December 1997. In its report of 20 May 1998 (former Article 31 of the Convention) it concluded, by nine votes to eight, that there had been a violation of Article 8 and, unanimously, that there had been no violation of Article 13. The full text of the Commission’s opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

41. In their memorials the Government asked the Court to find that the applicant had not repeated his complaint of a violation of Article 13 of the Convention and that there was therefore no need to examine it. With regard to the merits, the Government asked the Court to hold that the facts which gave rise to the application introduced by Mr Amann against Switzerland had not amounted to a violation of the Convention.

42. The applicant asked the Court to find that there had been a violation of Articles 8 and 13 of the Convention and to award him just satisfaction under Article 41.

1. *Note by the Registry*. For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission’s report is obtainable from the Registry.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ARISING FROM THE INTERCEPTION OF THE TELEPHONE CALL OF 12 OCTOBER 1981

43. The applicant complained that the interception of the telephone call he had received from a person at the former Soviet embassy in Berne had breached Article 8 of the Convention, which is worded as follows:

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

A. Applicability of Article 8

44. The Court reiterates that telephone calls received on private or business premises are covered by the notions of "private life" and "correspondence" within the meaning of Article 8 § 1 (see the Halford v. the United Kingdom judgment of 25 June 1997, *Reports of Judgments and Decisions* 1997-III, p. 1016, § 44). This point was not in fact disputed.

B. Compliance with Article 8

1. Whether there was any interference

45. The Court notes that it is not disputed that the Public Prosecutor's Office intercepted and recorded a telephone call received by the applicant on 12 October 1981 from a person at the former Soviet embassy in Berne. There was therefore "interference by a public authority", within the meaning of Article 8 § 2, with the exercise of a right guaranteed to the applicant under paragraph 1 of that provision (see the Kopp v. Switzerland judgment of 25 March 1998, *Reports* 1998-II, p. 540, § 53).

2. Justification for the interference

46. Such interference breaches Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in

paragraph 2 and is, in addition, "necessary in a democratic society" to achieve those aims.

(a) Whether the interference was "in accordance with the law"

47. The applicant submitted that there was no legal basis for the interference in Swiss law. In particular, he asserted that the Government could not rely on sections 66 to 72 FCPA as a basis for the measure complained of since they had not produced any evidence to prove that criminal proceedings had been brought against a third party or that the authorities had complied with the procedure laid down by those provisions. He argued in that connection that the Government's claim that the documents were no longer available lacked credibility. It transpired from the report of the Parliamentary Commission of Inquiry set up to investigate the so-called "card index" affair that lists had been kept relating to the telephone tapping ordered by the Public Prosecutor's Office and carried out by the Post, Telecommunications and Telegraph Office; furthermore, the Indictment Division of the Federal Court had kept registers recording the authorisations issued by its President; moreover, the Government could not claim that an employee at the former Soviet embassy in Berne was being monitored unless they had documents to support that assertion; lastly, the fact that the recording had not been destroyed "at the end of the proceedings" (section 66(1 *ter*) FCPA) showed that there had not been an investigation within the meaning of sections 66 et seq. FCPA.

The applicant maintained that all the telephone lines at the former Soviet embassy in Berne had been systematically tapped without any specific person being suspected of committing an offence or judicial proceedings being instituted in accordance with the law. He submitted that this presumption was confirmed by the fact that during the proceedings before the Swiss authorities the latter had expressly mentioned the term "counter-intelligence". In addition, the inquiries by the Parliamentary Commission of Inquiry set up to investigate the so-called "card index" affair had shown that the federal police had monitored citizens for decades without a court order. Section 17(3) FCPA could not be relied on as a basis for such practices by the *police politique*.

With regard to the Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office, the applicant pointed out that the text contained purely organisational provisions relating to the various offices of the Federal Department of Justice and Police and did not in any way empower those offices to interfere with the rights and freedoms protected by the Convention; it could not therefore be considered to be an adequate legal basis. Moreover, the applicant considered that the text was not sufficiently precise and accessible to satisfy the requirement of "foreseeability" as defined by the Court's case-law.

48. The Commission found that there had not been a sufficient legal basis for the monitoring of the applicant's telephone conversation. The Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office was drafted in too general terms. Furthermore, it had not been shown that the procedure laid down in sections 66 et seq. FCPA had been followed.

49. The Government maintained that there had definitely been a legal basis in Swiss law. As a preliminary point, they indicated that the measure in question had been carried out, under section 66(1 *bis*) FCPA, in the context of monitoring ordered by the Public Prosecutor's Office of a particular employee at the former Soviet embassy in Berne and that the applicant had not been the subject of the telephone tapping, either as a suspect or as a third party (the latter being the person who had ordered the depilatory appliance); the applicant had therefore been recorded "fortuitously" as a "necessary participant".

In the Government's submission it was of little importance whether the measure had been ordered in the context of criminal proceedings which had already been instituted or with the aim of preventing the commission of an offence, since section 17(3) (based on Article 102 §§ 9 and 10 of the Federal Constitution), section 72 FCPA and Article 1 of the Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office formed a sufficient legal basis in either case. It pointed out that the Court had concluded in a similar case that there had been a legal basis in Swiss law (see the Kopp judgment cited above, pp. 540-41, §§ 56-61).

The only decisive question was whether the safeguards provided for by law had been complied with. In that connection the Government stated that since they were unable to consult the file they could not verify whether the approval of the President of the Indictment Division of the Federal Court required under section 66 *bis* FCPA had been granted. In the light of the statement in the report by the Parliamentary Commission of Inquiry set up to examine the so-called "card index" affair that the President of the Indictment Division of the Federal Court had approved all the investigating judge's decisions, they presumed, however, that he had also done so in this case.

50. The Court draws attention to its established case-law, according to which the expression "in accordance with the law" not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see the Kopp judgment cited above, p. 540, § 55).

(i) Whether there was a legal basis in Swiss law

51. The Government and the applicant disagreed as to whether that condition had been met. The Government's submission that sections 17(3) and 72 FCPA and Article 1 of the Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office amounted to a sufficient legal basis was disputed by the applicant.

52. The Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see the Kruslin v. France judgment of 24 April 1990, Series A no. 176-A, pp. 21-22, § 29, and the Kopp judgment cited above, p. 541, § 59). In that connection it points out that the Federal Court, in its judgment of 14 September 1994, held that it was unnecessary to examine whether sections 17(3) FCPA and Article 1 of the Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office could justify the alleged infringement of the applicant's personality rights. Moreover, that court expressed itself only in very general terms regarding section 72 FCPA, confining itself to pointing out that information could lawfully be gathered in order to prevent an offence being committed against the State or national security if there was evidence that such an offence was being prepared.

53. The Court has, admittedly, already ruled on the issue whether the Federal Criminal Procedure Act amounted, under Swiss law, to a sufficient legal basis for telephone tapping (see the Kopp judgment cited above, pp. 540-41, §§ 56-61). Unlike the position in the instant case, however, the authority to which Mr Kopp had submitted his complaint (the Federal Council) had examined in detail whether the surveillance was lawful (ibid., p. 533, § 31 (b)) and section 72 FCPA was not in issue.

54. In the instant case the Court does not consider it necessary to determine whether there was a legal basis for the interception of the telephone call of 12 October 1981. Even assuming that there was, one of the requirements flowing from the expression "in accordance with the law", namely – here – foreseeability, was not satisfied.

(ii) Quality of the law

55. The Court reiterates that the phrase "in accordance with the law" implies conditions which go beyond the existence of a legal basis in domestic law and requires that the legal basis be "accessible" and "foreseeable".

56. According to the Court's established case-law, a rule is "foreseeable" if it is formulated with sufficient precision to enable any individual – if need be with appropriate advice – to regulate his conduct (see the Malone v. the United Kingdom judgment of 2 August 1984, Series A no. 82, pp. 31-32, § 66). With regard to secret surveillance measures the Court has underlined the importance of that concept in the following terms (ibid., pp. 32-33, §§ 67-68):

> "The Court would reiterate its opinion that the phrase 'in accordance with the law' does not merely refer back to domestic law but also relates to the quality of the law,

> requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention ... The phrase thus implies – and this follows from the object and purpose of Article 8 – that there must be a measure of legal protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded by paragraph 1 ... Especially where a power of the executive is exercised in secret, the risks of arbitrariness are evident...
>
> ... Since the implementation in practice of measures of secret surveillance of communications is not open to scrutiny by the individuals concerned or the public at large, it would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference."

It has also stated that "tapping and other forms of interception of telephone conversations constitute a serious interference with private life and correspondence and must accordingly be based on a 'law' that is particularly precise. It is essential to have clear, detailed rules on the subject, especially as the technology available for use is continually becoming more sophisticated" (see the Kopp judgment cited above, pp. 542-43, § 72).

57. The "quality" of the legal provisions relied on in the instant case must therefore be considered.

58. The Court points out first of all that Article 1 of the Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office, according to which the federal police "shall provide an investigation and information service in the interests of the Confederation's internal and external security", including by means of "surveillance" measures, contains no indication as to the persons concerned by such measures, the circumstances in which they may be ordered, the means to be employed or the procedures to be observed. That rule cannot therefore be considered to be sufficiently clear and detailed to afford appropriate protection against interference by the authorities with the applicant's right to respect for his private life and correspondence.

59. It considers that the same is true of section 17(3) FCPA, which is drafted in similar terms.

60. As regards the other provisions of the Federal Criminal Procedure Act, the Court observes that section 66 defines the categories of persons in respect of whom telephone tapping may be judicially ordered and the circumstances in which such surveillance may be ordered. Furthermore, sections 66 *bis* et seq. set out the procedure to be followed; thus, implementation of the measure is limited in time and subject to the control of an independent judge, in the instant case the President of the Indictment Division of the Federal Court.

61. The Court does not in any way minimise the importance of those guarantees. It points out, however, that the Government were unable to

establish that the conditions of application of section 66 FCPA had been complied with or that the safeguards provided for in sections 66 et seq. FCPA had been observed.

It points out further that, in the Government's submission, the applicant had not been the subject of the impugned measure, either as a suspect or an accused, or as a third party presumed to be receiving information or sending it to a suspect or an accused, but had been involved "fortuitously" in a telephone conversation recorded in the course of surveillance measures taken against a particular member of staff of the former Soviet embassy in Berne.

The primary object of the Federal Criminal Procedure Act is the surveillance of persons suspected or accused of a crime or major offence (section 66(1) FCPA), or even third parties presumed to be receiving information from or sending it to such persons (section 66(1 *bis*) FCPA), but the Act does not regulate in detail the case of persons monitored "fortuitously" as "necessary participants" in a telephone conversation recorded by the authorities pursuant to those provisions. In particular, the Act does not specify the precautions which should be taken with regard to those persons.

62. The Court concludes that the interference cannot therefore be considered to have been "in accordance with the law" since Swiss law does not indicate with sufficient clarity the scope and conditions of exercise of the authorities' discretionary power in the area under consideration.

It follows that there has been a violation of Article 8 of the Convention arising from the recording of the telephone call received by the applicant on 12 October 1981 from a person at the former Soviet embassy in Berne.

(b) Purpose and necessity of the interference

63. Having regard to the foregoing conclusion, the Court does not consider it necessary to examine whether the other requirements of paragraph 2 of Article 8 were complied with.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ARISING FROM THE CREATION OF A CARD AND THE STORING THEREOF IN THE CONFEDERATION'S CARD INDEX

64. The applicant complained that the creation of a card on him, following the interception of a telephone call he had received from a person at the former Soviet embassy in Berne, and the storing thereof in the Confederation's card index had resulted in a violation of Article 8 of the Convention.

A. Applicability of Article 8

65. The Court reiterates that the storing of data relating to the "private life" of an individual falls within the application of Article 8 § 1 (see the Leander v. Sweden judgment of 26 March 1987, Series A no. 116, p. 22, § 48).

It points out in this connection that the term "private life" must not be interpreted restrictively. In particular, respect for private life comprises the right to establish and develop relationships with other human beings; furthermore, there is no reason of principle to justify excluding activities of a professional or business nature from the notion of "private life" (see the Niemietz v. Germany judgment of 16 December 1992, Series A no. 251-B, pp. 33-34, § 29, and the Halford judgment cited above, pp. 1015-16, § 42).

That broad interpretation corresponds with that of the Council of Europe's Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which came into force on 1 October 1985 and whose purpose is "to secure in the territory of each Party for every individual ... respect for his rights and fundamental freedoms, and in particular his right to privacy, with regard to automatic processing of personal data relating to him" (Article 1), such personal data being defined as "any information relating to an identified or identifiable individual" (Article 2).

66. In the present case the Court notes that a card was filled in on the applicant on which it was stated that he was a "contact with the Russian embassy" and did "business of various kinds with the [A.] company" (see paragraphs 15 and 18 above).

67. The Court finds that those details undeniably amounted to data relating to the applicant's "private life" and that, accordingly, Article 8 is applicable to this complaint also.

B. Compliance with Article 8

1. Whether there was any interference

68. The Government submitted that the issue whether there had been "interference" within the meaning of Article 8 of the Convention remained open since "the card contained no sensitive information about the applicant's private life", the latter "had not in any way been inconvenienced as a result of the creation and storing of his card" and that it had "in all probability never been consulted by a third party".

69. The Court reiterates that the storing by a public authority of information relating to an individual's private life amounts to an interference within the meaning of Article 8. The subsequent use of the stored information has no bearing on that finding (see, *mutatis mutandis*, the

Leander judgment cited above, p. 22, § 48, and the Kopp judgment cited above, p. 540, § 53).

70. In the instant case the Court notes that a card containing data relating to the applicant's private life was filled in by the Public Prosecutor's Office and stored in the Confederation's card index. In that connection it points out that it is not for the Court to speculate as to whether the information gathered on the applicant was sensitive or not or as to whether the applicant had been inconvenienced in any way. It is sufficient for it to find that data relating to the private life of an individual were stored by a public authority to conclude that, in the instant case, the creation and storing of the impugned card amounted to an interference, within the meaning of Article 8, with the applicant's right to respect for his private life.

2. Justification for the interference

71. Such interference breaches Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 and, in addition, is "necessary in a democratic society" to achieve those aims.

(a) Was the interference "in accordance with the law"?

72. The applicant submitted that there was no legal basis for creating and storing a card on him. In particular, he asserted that section 17(3) FCPA did not authorise the federal police to record the results of their surveillance measures. As to the Federal Council's Directives of 16 March 1981 applicable to the Processing of Personal Data in the Federal Administration, these were intended for the civil servants of the administration and were not therefore sufficiently clear and precise to enable citizens to ascertain their rights and obligations.

In his submission the authorities had, furthermore, failed to comply with the rules in force, since section 66(1 *ter*) FCPA and section 414 of the Federal Council's Directives of 16 March 1981 applicable to the Processing of Personal Data in the Federal Administration stipulated that recordings which turned out not to be necessary to the conduct of an investigation should be destroyed.

Lastly, he pointed out that the legislation which had come into force in the early 1990s, after the so-called "card index" affair had broken, did not provide for the possibility of instituting judicial proceedings to have a card destroyed. Thus, under the Federal Decree of 9 October 1992 on the Consultation of Documents of the Federal Public Prosecutor's Office and the Federal Council's Order of 20 January 1993 on the Consultation of Documents of the Federal Public Prosecutor's Office, cards were stored in the Federal Archives and all interested persons could do was have their card annotated if they disputed its contents.

73. The Commission agreed with the applicant. In particular, it considered that the Federal Council's Directives of 16 March 1981 applicable to the Processing of Personal Data in the Federal Administration were insufficiently precise and merely presupposed that there was a legal basis to the storing of information without themselves providing one.

74. The Government submitted that the Swiss legal system provided a sufficiently accessible and foreseeable legal basis having regard to "the special nature of secret measures in the field of national security".

Before 1990, they submitted, the impugned measures had mainly been based on section 17(3) FCPA and Article 1 of the Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office, those provisions being given concrete form by the Federal Council's Directives of 16 March 1981 applicable to the Processing of Personal Data in the Federal Administration. They pointed out that those directives had been published in the Federal Gazette (FF 1981, I, p. 1314).

After 1990, they submitted, a number of texts had been enacted on the processing and consultation of documents containing personal data, in particular the Federal Council's Order of 5 March 1990 on the Processing of Federal National Security Documents, the Federal Decree of 9 October 1992 on the Consultation of Documents of the Federal Public Prosecutor's Office and the Federal Council's Order of 20 January 1993 on the Consultation of Documents of the Federal Public Prosecutor's Office.

(i) Creation of the card

75. The Court notes that in December 1981, when the card on the applicant was created, the Federal Criminal Procedure Act, the Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office and the Federal Council's Directives of 16 March 1981 applicable to the Processing of Personal Data in the Federal Administration were in force. None of those provisions, however, expressly mentions the existence of a register kept by the Public Prosecutor's Office, which raises the question whether there was "a legal basis in Swiss law" for the creation of the card in question and, if so, whether that legal basis was "accessible" (see the Leander judgment cited above, p. 23, § 51). It observes in that connection that the Federal Council's Directives of 16 March 1981 were above all intended for the staff of the federal administration.

In the instant case, however, it does not consider it necessary to rule on this subject, since even supposing that there was an accessible legal basis for the creation of the card in December 1981, that basis was not "foreseeable".

76. The Court has found above (see paragraphs 58 and 59) that section 17(3) FCPA and Article 1 of the Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office were drafted in terms too general to satisfy the requirement of

foreseeability in the field of telephone tapping. For the reasons already set out, it arrives at the same conclusion concerning the creation of the card on the applicant.

As regards the Federal Council's Directives of 16 March 1981 applicable to the Processing of Personal Data in the Federal Administration, they set out some general principles, for example that "there must be a legal basis for the processing of personal data" (section 411) or that "personal data may be processed only for very specific purposes" (section 412), but do not contain any appropriate indication as to the scope and conditions of exercise of the power conferred on the Public Prosecutor's Office to gather, record and store information; thus, they do not specify the conditions in which cards may be created, the procedures that have to be followed, the information which may be stored or comments which might be forbidden.

Those directives, like the Federal Criminal Procedure Act and the Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office, cannot therefore be considered sufficiently clear and detailed to guarantee adequate protection against interference by the authorities with the applicant's right to respect for his private life.

77. The creation of the card on the applicant was not therefore "in accordance with the law" within the meaning of Article 8 of the Convention.

(ii) Storing of the card

78. The Court points out first of all that it would seem unlikely that the storing of a card which had not been created "in accordance with the law" could satisfy that requirement.

Moreover, it notes that Swiss law, both before and after 1990, expressly provided that data which turned out not to be "necessary" or "had no further purpose" should be destroyed (section 66(1 *ter*) FCPA, section 414 of the Federal Council's Directives of 16 March 1981 applicable to the Processing of Personal Data in the Federal Administration and Article 7 of the Federal Decree of 9 October 1992 on the Consultation of Documents of the Federal Public Prosecutor's Office).

In the instant case the authorities did not destroy the stored information when it emerged that no offence was being prepared, as the Federal Court found in its judgment of 14 September 1994.

79. For these reasons, the storing of the card on the applicant was not "in accordance with the law" within the meaning of Article 8 of the Convention.

80. The Court concludes that both the creation of the impugned card by the Public Prosecutor's Office and the storing of it in the Confederation's card index amounted to interference with the applicant's private life which cannot be considered to be "in accordance with the law" since Swiss law

does not indicate with sufficient clarity the scope and conditions of exercise of the authorities' discretionary power in the area under consideration. It follows that there has been a violation of Article 8 of the Convention.

(b) Purpose and necessity of the interference

81. Having regard to the foregoing conclusion, the Court does not consider it necessary to examine whether the other requirements of paragraph 2 of Article 8 were complied with.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

82. The applicant also alleged a violation of Article 13 of the Convention, which is worded as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The Government's preliminary objection

83. The Government noted that the applicant had not repeated his complaint relating to Article 13 of the Convention in his memorial submitted on 11 May 1999. They accordingly considered that there was no need to examine that issue.

84. The Court notes that the applicant relied on Article 13 of the Convention before the Commission, that the Commission examined that complaint in its report of 20 May 1998 and that, when invited to lodge with the Court memorials relating to the issues raised by this case, as declared admissible by the Commission, the applicant submitted observations on Article 13 in his memorial filed on 14 June 1999.

Accordingly, the Court considers that the applicant did not manifest an intention to waive before it his complaint of a violation of Article 13 of the Convention which he had alleged before the Commission.

The Government's preliminary objection cannot therefore be upheld.

B. Merits of the complaint

85. The applicant complained that he had not had an "effective remedy" since he had been unable to raise before the Federal Court the issue whether the telephone tapping and the creation and storing of the card were lawful.

86. The Commission found that the administrative-law action brought by the applicant had amounted to an effective remedy.

87. The Government agreed with that finding. They stressed that the applicant, in bringing an administrative-law action in the Federal Court, had sought compensation for non-pecuniary damage and, in the alternative, a finding that the card on him was illegal.

88. The Court reiterates first of all that in cases arising from individual petitions the Court's task is not to review the relevant legislation or practice in the abstract; it must as far as possible confine itself, without overlooking the general context, to examining the issues raised by the case before it (see the Holy Monasteries v. Greece judgment of 9 December 1994, Series A no. 301-A, pp. 30-31, § 55).

It further observes that Article 13 of the Convention requires that any individual who considers himself injured by a measure allegedly contrary to the Convention should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress (see the Leander judgment cited above, pp. 29-30, § 77). That provision does not, however, require the certainty of a favourable outcome (see the D. v. the United Kingdom judgment of 2 May 1997, *Reports* 1997-III, p. 798, § 71).

89. In the instant case the Court notes that the applicant was able to consult his card as soon as he asked to do so, in 1990, when the general public became aware of the existence of the card index being kept by the Public Prosecutor's Office. It also points out that the applicant brought an administrative-law action in the Federal Court and that on that occasion he was able to complain, firstly, about the lack of a legal basis for the telephone tapping and the creation of his card and, secondly, the lack of an "effective remedy" against those measures. It notes that the Federal Court had jurisdiction to rule on those complaints and that it duly examined them. In that connection it reiterates that the mere fact that all the applicant's claims were dismissed is not in itself sufficient to determine whether or not the administrative-law action was "effective".

90. The applicant therefore had an effective remedy under Swiss law to complain of the violations of the Convention which he alleged. There has not therefore been a violation of Article 13.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

92. The applicant claimed 1,000 Swiss francs (CHF) for non-pecuniary damage and did not claim any amount in respect of pecuniary damage.

93. The Government maintained that if the Court were to find a violation of the Convention, the non-pecuniary damage would be adequately compensated by the publicity given to the judgment.

94. The Court considers that the non-pecuniary damage is adequately compensated by the finding of violations of Article 8 of the Convention.

B. Costs and expenses

95. The applicant also claimed CHF 7,082.15 in respect of his costs and expenses for the proceedings before the Convention institutions.

96. The Government stated that, in the light of all the circumstances of the present case and the amounts awarded by the Court in other applications directed against Switzerland, they were prepared to pay CHF 5,000.

97. The Court considers that the claim for costs and expenses is reasonable and that it should be allowed in full.

C. Default interest

98. According to the information available to the Court, the statutory rate of interest applicable in Switzerland at the date of adoption of the present judgment is 5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention arising from the interception of the telephone call;

2. *Holds* that there has been a violation of Article 8 of the Convention arising from the creation and storing of the card;

3. *Dismisses* the Government's preliminary objection relating to Article 13 of the Convention;

4. *Holds* that there has not been a violation of Article 13 of the Convention;

5. *Holds* that the present judgment in itself constitutes sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months, CHF 7,082.15 (seven thousand and eighty-two Swiss francs fifteen centimes) for costs and expenses;
(b) that simple interest at an annual rate of 5% shall be payable on this sum from the expiry of the above-mentioned three months until settlement;

7. *Dismisses* 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 16 February 2000.

Elisabeth PALM
President

Michele DE SALVIA
Registrar