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

SECOND SECTION

CASE OF H.B. v. SWITZERLAND

(Application no. 26899/95)

JUDGMENT

STRASBOURG

5 April 2001

DÉFINITIF

05/07/2001

This judgment will become final in the circumstances set out in Article 44 § 2.

In the case of H.B. v. Switzerland,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr A.B. BAKA, *President*,
Mr L. WILDHABER,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 15 March 2001,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 26899/95) against Switzerland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Swiss national, H. B. ("the applicant"), on 17 March 1995.

2. The applicant was represented by Mr L. Erni, a lawyer practising in Zürich, Switzerland. The Swiss Government ("the Government") were represented by their Deputy Agent, Mr F. Schürmann, Head of the Human Rights and Council of Europe Section of the Federal Office of Justice. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant alleged that contrary to Article 5 § 2 of the Convention he had not been sufficiently informed of the grounds of his detention. Under Article 5 § 3 of the Convention he complained of the position of the investigating judge in his case. Under Article 13 of the Convention he complained that he did not have an effective remedy at his disposal to complain about his detention on remand.

4. The application was declared admissible by the Commission on 18 September 1997 and transmitted to the Court on 1 November 1999 in accordance with Article 5 § 3, second sentence, of Protocol No. 11 to the Convention, the Commission not having completed its examination of the case by that date.

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. On 14 October 1999 the applicant filed his observations by way of a new application which he requested to be joined with his previous application. The Government filed observations in reply (Rule 59 § 1). After consulting the parties, the Court decided that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant, born in 1959, is a businessman residing in Küsnacht in Switzerland.

A. Proceedings in the Canton of Solothurn

8. On 8 March 1993 the investigating judge (*Untersuchungsrichter*) of the Canton of Solothurn issued a criminal charge (*Strafanzeige*) against unknown persons on suspicion of having committed various criminal offences against the B. company, including forging documents and the improper use of funds obtained by increasing the company's capital. On 10 March 1993 criminal investigations were opened against unknown persons. On 20 April 1993 the investigating judge heard A.W., who had been deputy director of the B. company until 31 December 1991.

9. On 26 April 1993 the investigating judge issued a warrant of arrest against the applicant and a certain R.B., both being members of the board and managers of the B. company, on suspicion of having committed the offences of forging documents, fraudulently obtaining a false document, disloyal management, and giving incorrect information as to commercial companies (*Urkundenfälschung, Erschleichen einer Falschbeurkundung, ungetreue Geschäftsführung und unwahre Angaben über Handelsgesellschaften*).

10. On 12 May 1993 the applicant was arrested and detained on remand in the municipality of Solothurn.

11. On the same day, the applicant was brought before the investigating judge who informed him orally of the grounds of his arrest and that he would not be allowed to contact his lawyer. The investigating judge issued a detention order, countersigned by the applicant, informing him of the grounds of his detention, as previously stated in the warrant of arrest.

12. Also on 12 May 1993 the investigating judge issued an order to search the B. company and the applicant's house. The order stated that the

applicant's lawyer was not allowed to consult the case-file or to participate in the taking of evidence, and he was not to see or to speak with the applicant.

13. Still on 12 May 1993 the applicant filed with the Court of Appeal (*Obergericht*) of the Canton of Solothurn a handwritten complaint about his arrest and detention and that he had been refused contact with his lawyer. In his appeal, he referred, *inter alia*, to accusations concerning the B. company's activities at the end of 1991, and to various reproaches formulated in 1992. He recalled that in 1992 he had offered the B. company's co-operation with the prosecuting authorities, and that the latter had interrogated A.W. in 1992 and 1993. He pointed out that if he had wanted, he could have undertaken colluding activities as from December 1991.

14. On 14 May 1993 the applicant refused to reply when questioned.

15. On 15 May 1993 the investigating judge amended that part of his order of 12 May 1993 concerning the lawyer's prohibition to see or speak with the applicant, as that part had been drafted erroneously under stress.

16. On 17 May 1993 the applicant was visited by his lawyer. He was also questioned by the police, though he refused to reply. He insisted that he should first duly be informed of the charges laid against him.

17. In the afternoon of 17 May 1993 the investigating judge informed the applicant that the charges against him concerned an increase of capital of the B. company in 1991, the balance sheet of 1991 and the accusation of disloyal management of the B. company.

18. On 18 May 1993 the applicant's lawyer filed a complaint with the Court of Appeal against the applicant's arrest and detention. He requested the applicant's release, and the lifting of all restrictions of his defence rights. He further complained that there had been no concrete information about the offences laid against him. The applicant's lawyer also complained that the applicant had not been heard by a "judge or other officer" as required by Article 5 § 3 of the Convention.

19. On 18, 19 and 22 May 1993 the applicant was again questioned.

20. On 22 May 1993 the applicant was released from detention on remand.

21. During the proceedings before the Court of Appeal the investigating judge filed observations in writing. The applicant in his reply dated 8 June 1993 pointed out that for one and a half year sweeping charges had been levelled against the B. company. For over a year the cantonal authorities had been threatening with proceedings in order to obtain documents.

22. As from 16 September 1993 the applicant and his lawyer were permitted to consult the case-file.

23. On 4 October 1993 the Court of Appeal struck the applicant's appeals of 12 and 18 May 1993 off its list of cases as having lost their purpose. The Court referred to the case-law of the Federal Court (*Bundesgericht*) as to the requirement in such cases of an appellant's legitimation according to S. 88 of the Federal Judiciary Act

(*Organisationsgesetz*). The Court found that the applicant had meanwhile been released from detention and that he therefore lacked a practical interest in his appeal.

B. First set of proceedings before the Federal Court

24. On 8 November 1993, the applicant filed a public law appeal (*staatsrechtliche Beschwerde*) with the Federal Court in which he complained that the Court of Appeal had struck the appeal off its list of cases. He also complained about his detention on remand, the limitations of his defence rights, and that the position of the investigating judge breached Article 5 § 3 of the Convention.

25. On 26 January 1994 the investigating judge filed observations with the Federal Court on the applicant's public law appeal. With regard to the grounds of detention, he stated that, in view of the applicant's previous contacts with other persons concerned, it could be assumed that the applicant, would with great probability have known quite clearly which charges were laid against him.

26. On 2 September 1994 the Federal Court dismissed the public law appeal, the decision being served on 21 September. In its judgment, the court examined, with reference to its own case-law, whether or not the applicant was entitled under S. 88 of the Federal Judiciary Act to file a public law appeal. The Federal Court refused to grant the applicant standing, noting, *inter alia*, that the Court of Appeal had itself stated that it would be able again to examine in a later case whether or not the investigating judge of the Canton of Solothurn complied with the requirements of Article 5 of the Convention.

C. Second set of proceedings before the Federal Court

27. On 13 February 1995 the applicant, R.B. and the B. company filed with the Federal Court, pursuant to S. 42 of the Federal Judiciary Act a civil action against the Canton of Solothurn, claiming compensation for unlawful detention. After hearing various witnesses the court gave its judgment on 13 April 1999.

28. In its judgment the Federal Court considered, *inter alia*, that the applicant's detention on remand had been lawful in that the investigating judge had correctly assumed that there was a danger of collusion in the applicant's case, and that he had duly conducted the investigations.

29. The Federal Court furthermore dealt with the applicant's complaint that during his detention he had been refused contact with his lawyer. The court concluded that the complaint was well-founded and that compensation was due by the Canton of Solothurn.

30. The Federal Court also considered the applicant's complaint under Article 5 § 2 of the Convention that he had not been duly informed of the reasons of his detention. The court reiterated the various points raised by the applicant in his complaint of 12 May 1993 from which it transpired that he had been informed orally by the investigating judge on that day. The Federal Court found that the investigating judge had duly informed the applicant of the various charges of which he was accused as well as of the object of the investigations. The court concluded that the applicant had had sufficient information to file a complaint against his detention on remand.

31. In its judgment the Federal Court replied to the applicant's complaint that the investigating judge of the Canton of Solothurn did not comply with the requirements under Article 5 § 3 of the Convention. It noted that in principle the investigating judge was independent of the Public Prosecutor. After summarising its own case-law and that of the Court in the case of Huber v. Switzerland (judgment of 23 October 1990, Series A no. 188), the court concluded that the investigating judge qualified as an independent and impartial officer authorised by law to exercise judicial power within the meaning of Article 5 § 3 of the Convention, *inter alia*, on the following grounds:

> "In the Canton of Solothurn the investigating judge conducts the inquiries or the preliminary investigations ... He closes these proceedings by means of a final order and refers the matter according to S. 97 § 2 of the Code of Criminal Procedure in cases of jurisdiction of the District Court or the District Court President ... to that court "for examination". In respect of the description of the facts of which an accused is reproached and of their assessment from the point of view of criminal law, the final order will serve as bill of indictment in the cases of jurisdiction of the District Court and the District Court President ... In cases appertaining to the Criminal Court and the Court of Appeal, the final order will contain an application to the Public Prosecutor to file an indictment, or to the Indictment Chamber to close the proceedings ... (T)he investigating judge does not himself represent the prosecution in the court proceedings which follow the preliminary investigations. In cases before the Criminal Court and the Court of Appeal the public prosecutor will be exclusively responsible herefor. In case of jurisdiction of the District Court or the District Court President, there will be no prosecuting authority acting as party. The investigating judge will have no standing in the proceedings ...; as a result, it is excluded that he makes an application in his final order as to the sentence ... This right pertains exclusively to the Public Prosecutor - even in cases where the law does not provide for indictment and representation of the prosecution ... It follows that the final order of the investigating judge only has declaratory, orienting character ..."

32. As a result, the Federal Court ordered the Canton of Solothurn to pay the applicant 3,000 Swiss francs (CHF) as well as 5% interest since 12 May 1993 as he had been refused contact with his lawyer during his detention. The remainder of the action was dismissed. On the other hand, the plaintiffs were ordered to pay CHF 7,490 as procedural costs, and to reimburse the Canton of Solothurn the amount of CHF 15,000.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Federal Judiciary Act

33. S. 42 of the Federal Judiciary Act provides for actions concerning civil litigation introduced by private persons against Cantons before the Federal Court which will examine the action as the sole instance.

34. According to S. 88 of the Act, an applicant is entitled to file a public law appeal "in respect of those breaches of law, which they have suffered on the basis of laws or orders which are generally applicable or personally concern them".

35. The Federal Court has interpreted S. 88 of the Federal Judiciary Act in matters of detention on remand as requiring an actual and practical interest of the applicant in the quashing of the contested act. This requirement ensures that the Federal Court will examine concrete and not merely theoretical issues, and thus serves procedural economy. A person who has been released from detention no longer has an actual practical interest in the examination of his appeal for release from detention. Exceptionally, the Federal Court will renounce the requirement of an actual practical interest if the contested interference could at any time be repeated; if there is a sufficient public interest in the examination of the question; and if in the circumstances of the case the matter could rarely be examined on time (see ATF [Arrêts du Tribunal Fédéral] 110 [1980] Ia 140).

36. According to ATF 125 [1999] I 394, a person lacking the required actual practical interest to complain in a public law appeal about a breach of Article 5 of the Convention, may nevertheless claim damages based on Article 5 § 5 of the Convention and introduce an action for compensation. This decision referred to the possibility of cantonal proceedings as well as of filing an action according to S. 42 of the Judiciary Act (see above, § 33). The preceding summary referred to the decision as "stating the case-law more precisely".

B. Criminal procedure of the Canton of Solothurn

37. The Judiciary Act of the Canton of Solothurn *(Gesetz über die Gerichtsorganisation*) of 1977 provides in SS. 4 *et seq*. for the jurisdiction in criminal matters, *inter alia*, of the District Court (*Amtsgericht*), the District Court President, the Court of Appeal (*Obergericht*) and the Criminal Court (*Kriminalgericht*). Pursuant to S. 15, the District Court will examine offences not pertaining to the jurisdiction of the other courts or of the District Court President. According to S. 72 of the Judiciary Act, the Public Prosecutor will prepare a bill of indictment in cases to be tried by the Court of Appeal or the Criminal Court. He will prepare the bill of

indictment before the District Court if it is so agreed with the District Court President or upon request of the accused.

38. According to S. 50 of the Code of Criminal Procedure (*Strafprozessordnung*) of the Canton of Solothurn, a detained person must be released immediately if there is no longer a reason for his detention. SS. 83 *et seq*. provide that the investigating judge will conduct the investigations. S. 97 § 2 states that, if in cases before the District Court or District Court President the investigating judge decides to refer the case to court for examination, his final order shall contain a summary description of the facts, the legal description of the offence and the applicable criminal provisions.

39. As regards the relations between the Public Prosecutor's Office (*Staatsanwaltschaft*) and the investigating judge, S. 75 of the Judiciary Act states that the Public Prosecutor will supervise the office of the cantonal investigating judge, and that he can issue instructions as to the conduct of business (*Geschäftsführung*). S. 13 § 2 of the Code of Criminal Procedure provides that in cases to be prosecuted *ex officio* the Public Prosecutor may at any time instruct the investigating judge to take evidence. S. 101 of the Code of Criminal Procedure provides that in cases before the Court of Appeal and Criminal Court the Public Prosecutor may, after the investigating judge has prepared his final order, order the investigating judge to undertake supplementary taking of evidence.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

40. The Government claimed, as they had before the Commission, that the applicant's complaints under Article 5 §§ 2 and 3 and Article 13 of the Convention should have been declared inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention. Thus, when the Commission declared the present application admissible on 18 September 1997, the applicant had not shown that he had obtained by means of an action for compensation a decision from the Federal Court on the merits of the complaints he was raising before the Commission.

41. The Court notes the Commission's decision on the admissibility of the present application of 18 September 1997 in which it was concluded:

> "(T)he applicant complied with the requirements under Article 26 of the Convention by first employing the remedies provided by the national legal system. The Swiss authorities were thus provided the opportunity to put matters right through their own legal system, though they chose not to do so for reasons for which the applicant could not be held responsible.
>
> In view thereof, it is unnecessary further to examine whether the applicant should have introduced, in addition and on the basis of Article 5 § 5 of the Convention, an action for compensation for unlawful detention, and whether the applicant's current action, pending before the Federal Court since 1995, would meet the requirements of Article 26 of the Convention in the present case."

42. In the Court's opinion, it is unnecessary to review this decision, since on 13 April 1999 the Federal Court gave its judgment on the action for compensation filed by the applicant in which it dealt, *inter alia*, with his complaints raised before the Commission. Indubitably, the applicant has complied with the requirements under Article 35 § 1 of the Convention.

43. It follows that the Government's preliminary objection must be rejected.

II. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

44. The applicant complained that he had not been informed of the grounds for his detention. He relied on Article 5 § 2 of the Convention which provides:

> "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

45. The applicant contended that it did not suffice merely to refer to some legal provisions which the accused had allegedly contravened. He had never been told with which acts he had breached these provisions. The information which he received at the outset was insufficient. A confirmation herefor could be found in the observations of the investigating judge filed with the Federal Court on 26 January 1994 in which the judge found it necessary to argue with the probability that the applicant was aware of the charges laid against him. As he, the applicant, had not been given sufficiently concrete information, he was not in a position duly to defend himself as an accused.

46. The Government considered that the information obtained by the applicant satisfied the requirements under Article 5 § 2 of the Convention. Thus, from the beginning the applicant was informed of more than merely the legal basis of his arrest. According to the Federal Court's decision of 13 April 1999, not contested by the applicant, his request for release from detention on 12 May 1993 disclosed that the applicant had obtained information orally from the investigating judge. In fact, criminal

proceedings against the B. company had been foreseeable, as the applicant himself confirmed in his observations of 8 June 1993 to the Court of Appeal. Further information was provided during the applicant's questioning on 17, 18, 19 and 22 May 1993. On the whole the applicant was fully informed of the reasons for his arrest and of the charges brought against him.

47. The Court recalls that Article 5 § 2 of the Convention contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see the Fox, Campbell and Hartley v. the United Kingdom judgment of 30 August 1990, Series A no. 182, p. 19, § 40).

48. Turning to the present case, the Court notes that immediately upon his arrest on 12 May 1993 the applicant was informed in writing of the various offences of which he was suspected. In addition, as the Federal Court noted in its judgment of 13 April 1999, the applicant was orally informed by the investigating judge of accusations directed against the B. company, and indeed, he had been well aware of the prosecuting authorities' interest in the company. All this information enabled the applicant to file a hand-written complaint with the Court of Appeal of the Canton of Solothurn on the day of his arrest. On 17 May 1993 the applicant was informed of further grounds leading to his arrest and detention. On 18 May 1993 the applicant's lawyer filed a further complaint.

49. Bearing in mind that the applicant, a member of the board and manager of the B. company, had specialised knowledge of the financial situation of the company, the Court considers that upon his arrest the applicant was duly informed of the "essential legal and factual grounds for his arrest, so as to be able, if he [saw] fit, to apply to a court to challenge its lawfulness" (see the Fox, Campbell and Hartley judgment cited above, § 40).

50. It follows that there was no breach of Article 5 § 2 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

51. The applicant also complained of the position of the investigating judge in his case who could refer a case to trial and who was under the instructions of the Public Prosecutor's office. The applicant relied on Article 5 § 3 of the Convention which states, insofar as relevant:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power ..."

52. The applicant pointed out that the investigating judge of the Canton of Solothurn could not be considered impartial when conducting the investigation in view of his subsequent prosecuting functions. Thus, in cases to be dealt with by the District Court or the District Court President the investigating judge's referral to trial replaced the bill of indictment. In cases to be dealt with by the Criminal Court or the Court of Appeal the investigating judge could apply to the Public Prosecutor's office to file a bill of indictment. Moreover, the Public Prosecutor's office could issue instructions as to the taking of evidence to the investigating judge and generally supervise him. The applicant pointed out that the procedure before the investigating judge was not contradictory, and that the investigating judge had various instruments at his disposal to exercise power, for instance to refuse the applicant consultation of the case-file or contact with his lawyer.

53. The Government submitted that the position of the investigating judge of the Canton of Solothurn complied with the requirements under Article 5 § 3 of the Convention and differed, in particular, from the situation in the case of Huber v. Switzerland concerning the District Attorney of the Canton of Zürich (see the judgment of 23 October 1990, Series A no. 188). The investigating judge, who conducted the investigation, was not part of the prosecution. He could not draw up the bill of indictment and could not represent the prosecution at the trial. The fact that he prepared the final order was irrelevant since the order was only of a declaratory, orienting nature. The contents of the order – a summary of the facts and the legal description of the offence at issue – did not amount to a bill of indictment, it referred a case to the court for examination rather than for the conviction of the person concerned.

54. The Government furthermore considered that the investigating judge was independent of the Public Prosecutor's office. If the latter could inquire about the state of the proceedings and issue instructions as to the administration of evidence, the investigating judge remained free to decide whether he wished to comply with these requests. To the extent that the Public Prosecutor's office could order the investigating judge to complement the taking of evidence, these instructions concerned a phase of

the proceedings where the investigating judge was no longer concerned with detention. On the whole, the Public Prosecutor's office merely had general administrative supervisory functions of the investigating judge. The Government also considered that Article 5 § 3 of the Convention did not require a contradictory procedure and that the investigating judge of the Canton of Solothurn constituted an "officer authorised by law to exercise judicial power" within the meaning of Article 5 § 3 of the Convention.

55. The Court recalls that judicial control of interferences by the executive with the individual's right to liberty is an essential feature of the guarantee embodied in Article 5 § 3. Before an "officer" can be said to exercise "judicial power" within the meaning of this provision, he or she must satisfy certain conditions providing a guarantee to the person detained against any arbitrary or unjustified deprivation of liberty. Thus, the "officer" must be independent of the executive and the parties. In this respect, objective appearances at the time of the decision on detention are material: if it appears at that time that the "officer" may later intervene in subsequent criminal proceedings on behalf of the prosecuting authority, his independence and impartiality may be open to doubt. The "officer" must hear the individual brought before him in person and review, by reference to legal criteria, whether or not the detention is justified. If it is not so justified, the "officer" must have the power to make a binding order for the detainee's release (see the Assenov and others v. Bulgaria judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3298, § 146, and the Huber v. Switzerland judgment of 23 October 1990, Series A no. 188, p. 18, § 43).

56. In the present case, the Court notes that upon his arrest the applicant was heard in person by the investigating judge. Moreover, it has not been contested by the applicant that he could at any time have been released from detention, as provided for by S. 50 of the Code of Criminal Procedure of the Canton of Solothurn.

57. An issue arises, however, as to the independence and impartiality of the investigating judge, in particular whether he met the conditions of an "officer authorised by law to exercise judicial power" as required by Article 5 § 3 of the Convention. In examining this issue the Court is called upon to consider whether the investigating judge would, at a later stage, have been entitled to intervene on behalf of the prosecuting authority.

58. It is not in disagreement between the parties that upon the applicant's arrest and detention it was open which of the criminal jurisdictions of the Canton of Solothurn would eventually try the applicant if his case was referred to trial, in particular the District Court, the District Court President, the Court of Appeal or the Criminal Court of the Canton of Solothurn.

59. The Court has first examined the situation if the subsequent trial had been conducted before the District Court. The parties disagreed as to the position of the investigating judge in such proceedings.

60. The Court notes that in such a case the investigating judge, when closing the preliminary investigations, prepares a final order containing a summary description of the facts, the legal description of the offence and the applicable criminal provisions. It is true that both the Federal Court in its judgment of 13 April 1999 and the Government before the Court have referred to the merely declaratory and orienting character of this order.

61. Nevertheless, in the ensuing trial before the District Court there is no formal bill of indictment, nor will a member of the Public Prosecutor's office be present at the trial. Rather, it is the investigating judge who in his final order will provide the framework for the facts and their legal qualification within which the District Court then conducts its trial. As such, the order contains substantial elements, and indeed will exercise important functions, of a bill of indictment.

62. In these circumstances, the Court considers that, when the investigating judge decided on the applicant's arrest and detention, it appeared that, had his case been referred to trial before the District Court, the investigating judge ordering his detention on remand would have been "entitled to intervene in the subsequent criminal proceedings as a representative of the prosecuting authority" (see the Huber judgment cited above, p. 18, § 43).

63. In view thereof, it is unnecessary to examine, in addition, the situation if the case had been referred for trial to other jurisdictions, in particular the Criminal Court or the Court of Appeal of the Canton of Solothurn, or whether the investigating judge was in fact independent of the Public Prosecutor's office.

64. The Court considers, therefore, that there has been a violation of Article 5 § 3 of the Convention on the ground that the applicant was not brought before an "officer authorised by law to exercise judicial power".

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

65. In his application before the Commission the applicant complained under Article 13 of the Convention that he did not have an effective remedy at his disposal to complain about his detention on remand. Thus, both the Court of Appeal of the Canton of Solothurn and the Federal Court refused to examine his complaints about detention on remand as he had meanwhile been released. In his observations of 14 October 1999 the applicant no longer maintained this complaint.

66. The Government recalled the Federal Court's decision of 13 April 1999 which confirmed that the applicant had had an effective remedy at his disposal within the meaning of Article 13 of the Convention.

67. The applicant no longer wishing to pursue his complaints under Article 13, the Court sees no reason to consider them of its own motion (see, for example, the Steel and others v. the United Kingdom judgment of 23 September 1998, *Reports* 1998-VI, 2733, § 43).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicant claimed non-pecuniary damage amounting to CHF 10,000. The Government asked the Court to rule that a finding of a violation constituted sufficient just satisfaction.

70. The Court, making an assessment on an equitable basis, awards the applicant CHF 2,000 under this head.

B. Costs and expenses

71. The applicant also claimed CHF 25,667.70 for lawyer's costs in the domestic proceedings and in the proceedings in Strasbourg.

72. In the Government's view, the applicant's arguments in the proceedings concerning Article 5 §§ 2 and 3 of the Convention had remained essentially unchanged since his first public law appeal filed on 8 November 1993 with the Federal Court. In this respect, the Government considered the sum of CHF 8,000 both for the domestic proceedings and for the proceedings in Strasbourg as being adequate.

73. The Court, in accordance with its case-law, will consider whether the costs and expenses claimed were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, for instance, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-II).

74. The Court finds the applicant's claim for the domestic proceedings excessive. Making an assessment on an equitable basis, the Court awards him CHF 10,000 under this head.

C. Default interest

75. 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. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been no violation of Article 5 § 2 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds* that it is not necessary to examine the applicant's complaint under Article 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 2,000 (two thousand) Swiss francs for non-pecuniary damage, and 10,000 (ten thousand) Swiss francs in respect of legal costs;
   (b) that simple interest at an annual rate of 5% shall be payable from the expiry of the above-mentioned three months until settlement;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 April 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

András BAKA
President