AHR10328.83

APPLICATION No. 10328/83

Marlene BELILOS

against

SWITZERLAND

REPORT OF THE COMMISSION
(adopted on 7 May 1986)

9.079
06.2

CONTENTS

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I. INTRODUCTION

1. Below is a summary of the facts of the case as presented to the European Commission of Human Rights by the parties, together with an account of the proceedings.

a. The application

2. The applicant is a Swiss national born in 1941. She is a student and lives in Lausanne. She is represented in the proceedings before the Commission by Mr Jean Lob of the Lausanne Bar. The respondent Government is represented by Mr Olivier Jacot-Guillarmod, Head of the Council of Europe Department in the Federal Office of Justice in Berne.

3. On 29 May 1981 the Police Board of the municipality of Lausanne fined the applicant 200 Sw Fr for contravening the General Police Regulations of the municipality on account of her having taken part in an unauthorised demonstration in the streets of Lausanne on 4 April 1981.

4. The applicant appealed against this decision, and on 4 September 1981 the Police Board reduced the fine to 120 Sw Fr.

5. The applicant appealed to the Court of Criminal Cassation of the Vaud Cantonal Court, which dismissed the appeal on 25 November 1981.

6. On 2 November 1982 the Federal Court dismissed the applicant's public-law appeal.

As to the alleged breach of Article 6(1) of the Convention, it pointed out that regard had to be had to the interpretative declaration that Switzerland had made in respect of that provision, which had in contemplation precisely "cases where a decision taken by an administrative authority (could) be taken to court, not for determination of the merits but solely for review of its lawfulness" (translation). The Federal Court held that the final review of municipal decisions as carried out in the Canton of Vaud was compatible with Article 6(1) of the Convention as applied in Switzerland, having regard to the terms of the aforementioned interpretative declaration.

7. The applicant complained to the Commission, firstly, that she had not been tried by an "independent and impartial tribunal" within the meaning of Article 6(1) of the Convention, in that the Police Board of the municipality of Lausanne, which had fined her, came under police authority. In this connection she also argued that the Board had

determined a criminal charge without there having ultimately been any judicial review of the questions of fact as well as of law. She claimed that there had accordingly been a breach of Article 6(1) of the Convention. Lastly, as regard Switzerland's interpretative declaration in respect of Article 6(1) of the Convention, the applicant said that it could not have the legal effects of a reservation validly made under Article 64(2) of the Convention.

b. The proceedings

8. The application was lodged on 24 March 1983 and registered on 25 March 1983.

9. On 1 October 1984 the Commission decided to ask the Swiss Government to submit written observations on the admissibility and merits of the application, in accordance with Rule 42(2) (b) of its Rules of Procedure. In particular, the Government was asked to give its opinion on the following matters:

1. Having regard to paragraphs 65-67 of the Commission's report in the Temeltasch case, what interpretation of the words "ultimate control by the judiciary", which appear in the Swiss interpretative declaration in respect of Article 6(1) of the Convention, does the Government consider to be the most appropriate?

2. In the light especially of the Court's judgment in the cases of Albert and Le Compte (para 29) and Oztürk (para 56), does the Government consider that the applicant had a right to a court and to a determination by a tribunal of the matters in dispute, both for questions of fact and for questions of law, as required by Article 6(1) of the Convention, given the particular circumstances of the case?

10. The Government's observations were submitted on 14 December 1984. In a letter of 8 January 1985 the applicant requested an extension of time for submitting her observations in reply on the admissibility and merits of the application, and this was granted. On 28 January 1985 the President of the Commission decided to extend the time-limit to 1 March 1985. The applicant's observations in reply, which were dated 31 January 1985, reached the Commission on 4 February 1985.

11. On 8 July 1985 the Commission declared the application admissible. It told the parties they could submit further written observations on the merits of the application by 15 October 1985 if they so wished, but the parties stated they did not wish to avail themselves of this opportunity.

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12. After declaring the application admissible the Commission, in accordance with Article 28(b) of the Convention, placed itself at the disposal of the parties with a view to securing a friendly settlement of the matter. Consultations with the parties took place between 17 July 1985 and 9 August 1985. Given the positions taken up by the parties, however, the Commission found that there was no basis for such a settlement.

c. The present report

13. This report was drawn up by the Commission in accordance with Article 31 of the Convention, after deliberations and votes in plenary session, with the following members present:

MM. C. A. NØRGAARD, President
G. SPERDUTI
J. A. FROWEIN
M. TRIANTAFYLLIDES
G. JØRUNDSSON
S. TRECHSEL
B. KIERNAN
J. A. CARRILLO
A. S. GÖZÜBÜYÜK
A. WEITZEL
J-C. SOYER
H. G. SCHERMERS
G. BATLINER
H. VANDENBERGHE
Mrs G. H THUNE
Sir Basil HALL

14. The text of the report was adopted by the Commission on 7 May 1986 and will be forwarded to the Committee of Ministers in accordance with Article 31(2) of the Convention.

15. The purpose of the report, pursuant to Article 31(1) of the Convention, is:

1. to establish the facts; and
2. to state an opinion as to whether the facts found disclose a breach by the respondent Government of its obligations under the Convention.

16. Appended to the report is a schedule setting out the history of the proceedings before the Commission (Appendix I) and the Commission's decision on the admissibility of the application (Appendix II).

17. The full text of the parties' pleadings, together with the documents lodged with the Commission as exhibits, is held in the Commission's archives.

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II. ESTABLISHMENT OF THE FACTS

18. The facts of the case as found by the Commission may be summarised as follows:

19. On 4 April 1981 the applicant took part in an unauthorised demonstration in the streets of Lausanne. On 29 May 1981 the Police Board of the municipality of Lausanne fined her 200 Sw Fr for contravening the General Police Regulations of the municipality. The applicant appealed against this decision under Article 36 et seq of the Vaud Municipal Decisions Act of 17 November 1969. On 4 September 1981 the Police Board handed down a fresh decision, this time fining the applicant 120 Sw Fr.

20. The applicant appealed against this decision to the Court of Criminal Cassation of the Vaud Cantonal Court, arguing that the decision was null and void and that the Police Board had no power to determine the disputed contravention of the Regulations in view of the requirements of Article 6 of the Convention. On 25 November 1981 the Court of Criminal Cassation dismissed the appeal.

21. The applicant lodged a public-law appeal against this decision with the Federal Court. She pointed out that she had always challenged the Police Board's jurisdiction on the grounds of Article 6 of the Convention. In this connection she mentioned the terms of the interpretative declaration made by the Swiss Confederation in respect of this provision, whereby "(...) the guarantee of fair trail (...) is intended solely to ensure ultimate control by the judiciary over the acts or decisions of the public authorities (...)" and submitted that it did not follow from this declaration that an administrative authority was empowered to determine the merits of a criminal charge; jurisdiction was granted only in so far as citizens could ultimately avail themselves of judicial review.

22. The applicant submitted that this was not so in the instant case, since the powers of the Court of Cassation of the Vaud Cantonal Court and of the Federal Court were limited, questions of fact not normally being considered afresh. She pointed out that witnesses could not be questioned in the cantonal court or the Federal Court, so the Police Board's findings of fact were final, although the Board was not an independent and impartial tribunal established by law.

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23. Lastly, the applicant argued that under section 12 of the Vaud Municipal Decision Act, the municipality could delegate its powers to a senior police officer, who was an agent of the executive. That being so, the applicant claimed that as the Police Board was not independent of the police, it was acting as judge in its own cause.

24. On 2 November 1982 the Federal Court dismissed the public-law appeal brought by the applicant. It held that the scope of Article 6(1) of the Convention had to be lookd at in the light of the interpretative declaration made by Switzerland, and in this connection it referred to the message of 4 March 1974 from the Federal Council to the Federal Assembly to the effect that the interpretative declaration had been made precisely in contemplation of "cases where a decision taken by an administrative authority (could) be taken to court, not for determination of the merits but solely for review of its lawfulness (application for judicial review) (pourvoi en nullité)" (translation) and on the basis of the interpretation of Article 6(1) by the President of the European Commission of Human Rights (FF 1974, 1032). The Federal Court held that there was no need to depart from this interpretative declaration, even if its validity and scope were disputed by legal writers. It also noted that the European Court of Human Rights allowed that Article 6(1) was complied with insofar as a decision by an administrative authority was subject to ultimate judicial review, it being necessary to assess the guarantee of a fair trail in the light of the proceedings as a whole.

25. In the instant case the Federal Court found that the Vaud legislature had availed itself of the cantons' right under Article 345 (1)(2) of the Criminal Code to vest municipal authorities with the power to adjudicate certain minor offences (section 45 of the Municipalities Act of 28 February 1956; section 1 et seq of the Municipal Decisions Act (MDA), judicial review of such municipal decisions was carried out by the Court of Cassation of the cantonal court, which could examine both the lawfulness of the proceedings on an application for review (recours en nullité) (s 43 MDA) and whether the law had been correctly applied, where the appeal was a general one (recours en réforme) (s 44 MDA). The Federal Court conceded that the Cantonal Court of Cassation was not free to review the facts, but it held that this was not necessary from the point of view of Article 6(1) of the Convention where an appeal lay to a judicial authority which not only could review the lawfulness of the proceedings - including "whether there are serious doubts about facts found" (s 43(a)) - but could also entertain complaints of "erroneous application of the law" and "improper exercise of discretion" (s 44). The cantonal court accordingly had a power of review much wider than that of the Federal Court when hearing a public-law appeal, in which

only the question of arbitrariness was at issue, since the appeal proceedings were not limited to seeking to have a decision quashed on a point of law. The Federal Court added that where the Cantonal Court of Cassation set aside decisions because of serious doubts about facts found, it could request the minicipal authorities, to whom the case was remitted, to make further investigations. In the Federal Court's view this in itself was sufficient to show that the ultimate control of municipal decisions, as carried out in the Canton of Vaud, complied with Article 6(1) of the Convention interpreted in accordance with Switzerland's interpretative declaration.

26. The Federal Court concluded that the argument that the judiciary should ultimately be able to review both the facts and the law was unfounded in view of the Swiss interpretative declaration, "although it would be desirable for a criminal court to be given jurisdiction to try minor offences of the kind here in issue".

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III. SUBMISSIONS OF THE PARTIES

27. During the proceedings before the Commission the parties made, in substance, the submissions set out below.

A. The applicant

1. As to the Commission's jurisdiction

28. The applicant contended that the validity and scope of an interpretative declaration or a reservation had to be considered by the Commission of its own motion, independently of any relevant argument put forward by an applicant. She referred in this connection to the Court's judgment in the Ringeisen case and to the Commission's report in the Temeltasch case.

2. As to the nature of Switzerland's interpretative declaration in respect of Article 6(1) of the Convention

29. The applicant considered that Switzerland's interpretative declaration could not be equated with a reservation properly speaking.

She thought that the respondent Government's submissions would carry conviction if the Government had made only interpretative declarations in respect of the Convention. This was not the case, however. When ratifying the Convention Switzerland had made five reservations and two interpretative declarations, and the difference in terminology could not be due to chance.

30. The effects of choosing the one term or the other were different. A reservation meant that the Convention was inapplicable on a particular point. A State which made an interpretative declaration in respect of a provision of the Convention, on the other hand, accepted the application of the provision but, where various interpretations were possible, refused to accept any interpretation other than its own. This presupposed that the bodies responsible for applying the Convention had not already given an opinion on the point in issue at the time the State made its interpretative declaration. This applied to the interpretation of the words "ultimate control by the judiciary".

31. The applicant conceded that Switzerland's interpretation of these terms could not be disregarded, but it remained to be established that the interpretative declaration was valid. At all events, Switzerland's interpretation could not have the effect of making the interpreted provision inapplicable to that State or negate the interpretation which the bodies responsible for applying the Convention had already given when the interpretative declaration was made.

32. That being said, the applicant conceded that an interpretative declaration might sometimes have the effect of a reservation properly speaking, but she considered that this was not so in the instant case.

3. As to the conformity of Switzerland's interpretative declaration with Article 64 of the Convention

a. Is Switzerland's interpretative declaration a "reservation of general character"?

33. The applicant conceded, with the respondent Government, that Switzerland's interpretative declaration was not a reservation of general character. She considered, however, that it was ineffective as the Government had failed to comply with the condition in Article 64(2) of the Convention.

b. Legal effect of Switzerland's disregard of the condition in Article 64(2) of the Convention.

34. The applicant pointed out that the Government had itself recognised in its observations to the Commission that Switzerland's interpretative declaration did not satisfy the formal requirement in paragraph 2 of Article 64 of the Convention.

35. In this connection she referred to the Commission's report in the aforementioned Temeltasch case (para. 90), where it is stated:

> "It is beyond question that the obligation on a State to append to its reservation of brief statement of the law or laws it intends to keep in force - which in principle are not consistent with the Convention - also enables other Contracting Parties, and the organs of the Convention and any person concerned, to be informed of this legislation. This is an important factor and as regards the problem before the Commission, it is essential to take account of the scope of the Convention provision whose application a State intends to prevent by means of a reservation or an interpretative declaration. The necessity of including a statement of the law is much greater where a very wide provision of the Convention is concerned, eg Article 10, than in the case of a provision of a more limited application, eg Article 6(3)(e). In the former case, it is possible that a reservation made in breach of the requirements of Article 64(2) could be regarded as contrary to the Convention and as not having the effects intended by the State making it".

36. The applicant considered that in the Temeltasch case the Commission had been able to pass over the formal defect in Switzerland's interpretative declaration because it related to a very specific principle: the free assistance of an interpreter. She argued that matters were very different in the case of a reservation in respect of Article 6(1) of the Convention, which put a vital principle in issue - the principle of the rights of the defence.

37. She considered that it was necessary to describe the situation in the Confederation and the various Swiss cantons. Admittedly, the Government would have faced a number of practical difficulties in drawing up a list of the relevant cantonal and federal laws, but this practical difficulty could not justify flouting a perfectly clear vision of the Convention. Moreover, she thought it would have been possible for Switzerland to make a reservation concerning Article 64(2) of the Convention itself.

38. In the light of the foregoing, the applicant submitted (without conceding that the Swiss interpretative declaration was a reservation properly speaking) that the declaration was at all events invalid because it did not satisfy the requirement in Article 64(2) of the Convention

4. As to the construction of the words "ultimate control by the judiciary" in Switzerland's interpretative declaration in respect of Article 6(1) of the Convention

a. As to textual and historical interpretation

39. The applicant disputed that these words could be construed on the basis of the terms of the interpretative declaration itself or of the preparatory work which preceded Switzerland's ratification of the Convention. That method could be justified as a last resort where it had to be determined whether an interpretative declaration was to be equated with a reservation, but it was not acceptable where it was a question of interpreting the reservation itself, in the instant case the words "ultimate control by the judiciary".

40. The applicant pointed out that, as the Commission had affirmed in its report on the aforementioned case (para. 63), "the obligations undertaken by States are of an essentially objective character, which is particularly clear from the supervisory machinery established by the Convention". She submitted that an objective interpretation was required.

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b. Meaning of the words "ultimate control by the judiciary"

41. *The applicant* contended that this notion could only be interpreted in accordance with the settled past practice of the bodies responsible for applying the Convention. This implied that, at least at some stage in the proceedings, an individual should be able to submit his case to a court competent to determine all aspects of it. Such a court must, in particular, have jurisdiction to review the facts and to take evidence from any witness. The applicant said that this was not so in the instant case.

42. She did concede that giving an administrative authority jurisdiction in criminal cases at first instance was permissible, but only on condition that the party concerned retained the option of subsequently applying to a judicial body with full jurisdiction which offered the safeguards provided for in Article 6(1) of the Convention. On this point she referred to the Court's judgments in the Albert and Le Compte (para. 29) and the Öztürk cases (para. 56) and said that the principle which emerged in these judgments had manifestly not been complied with in the present case.

43. She recognised that, given Switzerland's interpretative declaration, it was open to Switzerland to submit minor criminal cases at first instance to an administrative authority such as the Police Board. But in those circumstances it was important that the cases should subseqently be able to be brought before a judicial authority with full jurisdiction - which was not so in the instant case.

44. The applicant submitted that at no stage had she had access to a court and a judicial determination of the matters in dispute, in particular as regards the facts.

B. The Government

1. As to the Commission's jurisdiction

45. The respondent Government noted that in its report adopted on 5 May 1982 in application No. 9116/80, Temeltasch v. Switzerland, the Commission expressed the view that "the very system of the Convention confers on it the competence to consider whether, in a specific case, a reservation or an interpretative declaration has or has not been made in accordance with the Convention" (Commission report, para. 65). On 24 March 1983 the Council of Europe's Committee of Ministers had adopted the Commmission's opinion in the Temeltasch case and decided that there had not been a breach of the Convention by Switzerland (Resolution DH (83)6).

46. Having noted the position that had thus been adopted on assessing the validity of reservations and interpretative declarations, the Government nevertheless stated that it could not but recognise the competence of the supervisory bodies set up under the Convention to interpret reservations and interpretative declarations. It noted that the Commission and the Court had on several occasions interpreted reservations made by States Parties to the Convention.

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2. As to the nature of Switzerland's interpretative declaration in respect of Article 6(1) of the Convention

47. The Government said that the question that arose was whether Switzerland's interpretative declaration in respect of Article 6(1) of the Convention cold be considered as a reservation within the meaning of Article 64(1) of the Convention.

48. The interpretative declaration was worded as follows:

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

49. In the respondent Government's view, it emerged clearly from the text of the interpretative declaration that when ratifying the Convention, Switzerland intended to restrict the scope of the guarantee of a fair trial in Article 6(1) of the Convention in the case of acts or decisions of the public authorities "relating", in particular, to the determination of a criminal charge; in such cases the guarantee in Article 6(1) of the Convention was intended "solely" (nur) to ensure "ultimate control by the judiciary" (letztinstanzliche richterliche Prüfung) over these acts or decisions of the public authorities.

50. Were there the slightest doubt about the restricting effect of the Government's interpretative declaration, the Government considered that such a doubt would be dispelled by the terms in which the Swiss parliament approved the European Convention on Human Rights on 3 October 1974. The text of the Federal Decree of approval, published in the official compendium of federal statutes (RO 1974, pp. 2148-49), was worded as follows:

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"Federal Decree
approving the Convention for the Protection of
Human Rights
and Fundamental Freedoms of 4 November 1950

(3 October 1974)

The Federal Assembly of the Swiss Confederation,
(...)

hereby decrees:

Section 1

The following are approved:

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

(...)

- Declaration interpreting Article 6(1):

(...)"

51. The Swiss Government maintained that the will thus expressed by the Swiss parliament on 3 October 1974 to make its approval of the Convention subject to, in particular, the wording of the interpretative declaration in respect of Article 6(1) confirmed that the declaration was designed to restrict in Switzerland the scope of control by the judiciary of acts or decisions of public authorities relating inter alia to the determination of criminal charges.

52. The Government submitted that its declaration interpreting Article 6(1) of the Convention was a "qualified interpretative declaration" and that it accordingly was in the nature of a reservation within the meaning of Article 2(1)(d) of the Vienna Convention on the Law of Treaties of 23 May 1969. It accordingly requested the Commission to take the view that Switzerland's interpretative declaration, which was an expression of its intentions at the time of ratifying the Convention and was put forward as a

condition of its consent to being bound by the instrument, was essentially designed to alter the legal affect of Article 6(1) of the Convention and that the declaration must be equated with a reservation within the meaning of Article 64 of the Convention. On this point the Government referred to the Commission's report in the Temeltasch case (para. 73).

3. As to the conformity of Switzerland's interpretative declaration with Article 64 of the Convention

a. Is Switzerland's interpretative declaration a "reservation of a general character"?

53. The respondent Government pointed out that the Commission had held that a reservation is of a general character "if it does not refer to a specific provision of the Convention or if it is worded in such a way that its scope cannot be defined" (Commission report in the Temeltasch case, para. 84).

54. In the instant case the Government argued that its interpretative declaration referred expressly to a specific provision of the convention - Article 6(1) - and that it was clearly worded; it was clear from the text that the Swiss Federal Council intended to limit the effect of the guarantee of a fair trial in Article 6(1) of the Convention, notably in cases where an administrative authority imposed a fine and, in so doing, determined a criminal charge. In such cases the Swiss Federal Council had made it known through its interpretative declaration that, as far as it was concerned, "ultimate control by the judiciary" - in other words, a review of the lawfulness of the public authority's decision (pourvoi en nullité) - was sufficient.

55. Moreover, the wording of Switzerland's interpretative declaration was objective in so far as it was based on a published official view expressed within the Strasbourg supervisory system. The Government submitted that its interpretative declaration in respect of Article 6(1) of the Convention was not a reservation of a general character.

b. As to the legal effects of Switzerland's disregard of the requirement in Article 64(2) of the Convention

56. The Government submitted, firstly, that unlike the applicant in the Temeltasch case, the applicant in the present case was not in any way challenging the validity of Switzerland's interpretative declaration on the grounds of alleged non-compliance with the formal requirement in Article 64(2) of the Convention.

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57. The Swiss Government, however, was addressing the question, given that in the Commission's view the requirement in Article 64(2) of the Convention "is essentially a supplementary condition, which must be interpreted together with paragraph 1" (Commission report in the Temeltasch case, para. 89).

58. In this connection the Government maintained that if, as the Commission conceded, the raison d'être of Article 64(2) was the States Parties' concern to avoid any reservations of a general character being made, Switzerland's interpretative declaration was not open to any criticism, since it referred explicitly to Article 6(1) of the Convention and was worded clearly.

59. The Government also noted that if one followed the Commission and legal writers in accepting that the main point of Article 64(2) of the Convention lay in ensuring that third parties (other Contracting Parties, the Convention bodies and "any person concerned", aforementioned Commission report, para. 90) were informed, it should be stated in the context of the instant case that both the Secretary General of the Council of Europe and the other supervisory bodies set up under the Convention, together with the Contracting Parties to the Convention, were in a position to assess the effect of Switzerland's interpretative declaration in respect of Article 6(1) of the Convention. This interpretative declaration was in fact appended to the instrument of ratification deposited by Switzerland on 28 November 1974, which was published and brought to the knowledge of the States Parties by the Secretary General (cf Article 66(4) of the Convention). Even if the other Contracting Parties did not necessarily know in detail the Government positions and the parliamentary debates which had preceded Switzerland's ratification of the convention, they could, in the Government's opinion, gain an accurate idea of the restrictive effect of Switzerland's interpretative declaration, since it referred to a concept - "ultimate control by the judiciary" - derived from the published practice of the supervisory bodies set up under the Convention.

60. As to the applicant and her counsel, they could measure the scope of Switzerland's interpretative declaration all the more easily as it was accepted in Switzerland that reference must be had to the Federal Council's communication to the federal parliament if there were any doubts about the scope of a reservation or interpretative declaration.

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61. For the rest, the Government said it could not share the view the Commission had expressed in the aforementioned report in the Temeltasch case (para. 90), where it held that "the necessity of including a statement of the law is much greater where a very wide provision of the Convention is concerned, eg Article 10, than in the case of a provision of a more limited application, eg Article 6(3)(e)".

62. The Government considered that the instant case went precisely to show the limits of this distinction, for while it was indisputable that Article 6(1) of the Convention was of much greater scope than Article 6(3)(e), which was at issue in the Temeltasch case, the Swiss Government would have had even greater practical difficulty in drawing up a list of the relevant cantonal and federal laws in the case of Article 6(1) of the Convention. In order to satisfy the formal requirement in Article 64(2) of the Convention, it would have been necessary, if any degree of accuracy was to be achieved, to describe all the procedures and appeals at both cantonal and federal level in Switzerland in civil, criminal and even administrative matters.

63. The Government submitted that an exercise of that kind would not have satisfied the formal requirement of a "brief statement" in Article 64(2) of the Convention but would have obfuscated in the guise of enlightening. The procedure and organisation of the courts in Switzerland were not unified. By Articles 64(3) and 64 bis(2) of the Swiss Federal Constitution of 1874, "the organisation of the courts, procedure and the administration of justice shall remain within the competence of the cantons to the same extent as hitherto". Moreover, several provisions of federal law (notably Article 54 of the last part of the Swiss Civil Code and Article 345(1)(2) of the Swiss Criminal Code) empower the cantons to appoint judicial or administrative authorities to determine certain disputes in private law or to try minor offences. The position of the competent cantonal administrative authorities and the possibilities of instituting cantonal court proceedings before taking one's case to the Federal court thus often varied considerably - according to the nature of the proceedings - from one canton to another.

64. In the light of the foregoing, the Government said that in Switzerland's case, complying with the formal requirement in Article 64(2) of the Convention would have been more of a hindrance than a help and that adhering to the letter of the provision might

even, given the inherent complexity of the organisation of courts in Switzerland, have given rise to serious misunderstandings about the scope of Switzerland's international commitment with respect to Article 6 of the Convention.

65. The Government submitted that although Switzerland's interpretative declaration in respect of Article 6(1) of the Convention did not comply with the formal requirement in paragraph 2 of Article 64, it nonetheless had the legal effects of a validly made reservation.

4. As to the construction of the words "ultimate control by the judiciary" in Switzerland's interpretative declaration in respect of Article 6(1) of the Convention

a. Textual interpretation

66. The Government maintained that the words "ultimate control by the judiciary", when taken in the context of Switzerland's interpretative declaration in respect of Article 6(1) of the Convention, clearly expressed the idea that the Swiss Government intended to regard partial judicial control, of the review type, not - or not necessarily - implying any judicial determination of the merits, as sufficient.

67. The Government pointed out that in choosing the terms "ultimate control by the judiciary" it had only paraphrased and adopted the language used by Mr Fawcett to express the view of the minority in the Commission at the hearing of the Ringeisen case by the European Court of Human Rights on 9 March 1971. In his address Mr Fawcett said:

> "What the minority does say is that there must be, under Article 6(1), ultimate judicial control of actions or decisions of public authority which affect, modify or annul civil rights or obligations. But that judicial control which Article 6(1) requires, is, as I shall show, limited.
>
> (...)
>
> However, it has been argued that the judicial function is often in practice confined, in its dealing with administrative and executive acts, to control of illegality, of excess of jurisdiction, so that the court cannot intervene on the merits and reverse the administrative or executive decision itself. In other words, there is here an area of administrative discretion beyong the reach of any court. It is then argued

that to interpret Article 6(1) as embracing the principle of judicial control would compel Contracting States to make large changes in their administrative and legal structures so as to bring these areas of administrative discretion under control by requiring a determination of the issues by an independent tribunal. In the view of the Commission minority, Article 6(1) makes no such demand. It calls only for a fair hearing, not for a determination of the merits".

68. The Government recognised that the minority's remarks referred to the civil part of Article 6(1) of the Convention. But it argued that it was clear from the text of the Swiss interpretative declaration that the Federal Council meant to adopt the same reasoning in respect of the criminal part of Article 6(1) of the Convention.

69. On the basis of a textual analysis the Government considered that the terms used in its interpretative declaration made clear in themselves its intention to restrict accordingly the scope of the judicial control normally secured by the aforementioned provision of the Convention.

b. Historical interpretation

70. In the Federal Council's report of 9 December 1968 to the Federal Assembly on the European Convention on Human Rights (FF 1968 II 1069) no mention is made of the question of reservations. In its supplementary report of 23 February 1972 (FF 1972 I 989 et seq), however, the Federal Council draws the Federal Assembly's attention to the reservations Switzerland ought to make when ratifying the Convention. At the end of these remarks (in which the Federal Council suggested making five reservations and one interpretative declaration) the Swiss Government drew parliament's attention to "fresh difficulty" which had arisen in 1971 and might lead Switzerland to make an additional "reservation" when ratifying the Convention.

71. The Federal Council said it reserved the right to return to the matter in greater detail subsequently and determine its attitude.

72. That was done in the Federal Council's communication of 4 March 1974 to the Federal Assembly. In that communication the Federal Council, taking as a basis the Court's interpretation of Article 6 of the Convention in its Ringeisen judgment of 16 July 1971 and adopting the points made by Mr Fawcett at the relevant hearing, stated its preference

for Mr Fawcett's restrictive interpretation of the concept of judicial control. It concluded that "this interpretation could be laid down in a declaration made when ratifying the Convention" (FF 1974 I 1030-33).

73. In this connection the Government referred in detail to its positions in the Federal Council communications of 23 February 1972 and 4 March 1974. Below are the main passages:

i. Extract from the supplementary report of 23 February 1972 by the Federal Court to the Federal Assembly on the Convention for the Protection of Human rights and Fundamental Freedoms (FF 1972 8 989 et seq, 995-96)

"(...)

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

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

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

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ii. Extracts from the Federal Council's communication of 4 March 1974 to the Federal Assembly concerning the Convention for the Protection of Human rights and Fundamental Freedoms (FF 1974 I 1022 et seq, 1030-33)

"The effects on the organisation of administration and of the courts in the cantons of the guaranteee of a right of access to the courts in Article 6 of the Convention

(FF 1972 I 995-96)

75. In our supplementary report of 23 February 1972 we noted among other things that when the Convention was being ratified it would probably be necessary to make a reservation concerning the scope of the first sentence of Article 6(1), whereby (...). We reserved the right to study this problem in greater detail, however, and to determine our attitude to the matter in this communication.

In its judgment of 16 July 1971 in the Ringeisen case the European Court of Human Rights stated that for Article 6(1) to be applicable to a case it was not necessary that both parties to the proceedings should be private persons. The wording of Article 6(1) was far wider. The French expression "contestations sur des droits et obligations de caractère civil" covered all proceedings the outcome of which was decisive of private rights and obligations. The English text "determination of (...) civil rights and obligations" confirmed this interpretation. In the Court's opinion, the character of the legislation which governed how the matter was to be determined (civil, commercial, administrative law, etc) or of the authority which was invested with jurisdiction in the matter (ordinary court, administrative body, etc) was therefore of little consequence.

In order to assess the exact scope of this provision, it has to be asked at what stage of the domestic proceedings the requirements of Article 6(1) have to be satisfied. Valuable clues are given in the address one of the delegates of the European Commission of Human Rights made to the Court in the Ringeisen case. According to

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Mr Fawcett, Article 6 of the Convention is designed to secure ultimate judicial control of actions or decisions of public authority which affect, in particular, civil rights and obligations. This judicial control is furthermore limited: the relevant provision calls only for a fair hearing and not for a determination of the merits. In other words, it is not necessary that the administrative authorities themselves should comply with the requirements of Article 6. But where their decisions have the effect of confirming, modifying or annulling civil rights or obligations, there must in the whole process be a judicial element of fair hearing.

(...)

Lastly, in criminal law, Article 345(1)(2) of the Swiss Criminal Code provides that minor offences can be tried by an administrative authority. Furthermore, Article 369 of the same Code empowers the cantons to appoint an administrative body to try offences committed by children or adolescents. In our report of 9 December 1968 on the Convention we said that, despite these departures from the principle of separation of powers, independence and impartiality are guaranteed in the aforementioned cases in other ways. In several cantons, for instance, the administrative authorities called upon to exercise judicial functions are elected by the people and are independent of the executive. In those circumstances they can be equated with a "tribunal" within the meaning of Article 6(1) of the European Convention on Human Rights. Moreover, a member of the public who is not satisfied with an administrative decision can very often ask to have his case heard by a court under ordinary procedure. The court then gives judgment on the merits of the charge and acquits or convicts. Where, on the other hand, the decision taken by an administrative authority can be referred to a court not for a judgment on the merits but solely for review of its lawfulness (pourvoi en nullité), the question arises whether this review procedure satisfies the requirements of Article 6 of the Convention.

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

(...)" (translation).

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76. The Government said, lastly, that the aforementioned Federal Decree of 3 October 1974, approving the Convention, referred to the Federal Council's communication of 4 March 1974.

77. It also pointed out that when on 28 November 1974 Switzerland deposited its instrument of ratification with the Secretary General of the Council of Europe, pursuant to the second sentence of Article 66(1) of the Convention, the instrument in question contained the wording traditionally used in such cases by Switzerland:

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

78. Having regard to all the above-mentioned preparatory work, the Government submitted that its intention in making the interpretative declaration in respect of Article 6(1) was to regard judicial control as being sufficient even if it was confined to a review of the lawfulness of decisions taken by administrative authorities.

c. Scope of the words "ultimate control by the judiciary"

79. The Government stated, in the first place, that it was clear from the aforementioned preparatory work that the real purpose of Switzerland's interpretative declaration was to "cover" proceedings which, in accordance with Article 345(1)(2) of the Swiss Criminal Code, took place before an administrative authority appointed by a canton to try certain minor offences. In such cases the cantons generally provided for the possibility of referring the administrative authority's decision to a court, which would not, however, review the facts, or not do so fully.

80. That being so, the Government maintained that the purpose of the interpretative declaration was to restrict the scope of the judicial control required under Article 6(1) of the Convention by removing the need for such control to be exercised by a judicial body having full jurisdiction.

81. It considered thtat the succinct wording used by Switzerland - "ultimate control by the judiciary" - was in itself sufficiently precise for the other States Parties to the Convention and for the supervisory bodies set up under it. In this connection the Government expressed the view that the fact that the States Parties to the Convention had not objected to this intepretative declaration showed byond a doubt that they had tacitly assented to it. Besides, before even drafting the interpretative declaration, the Swiss authorities had taken careful soundings through diplomatic channels, notably in the Secretariat of the Council of Europe, which was the depositary of the Convention.

82. Given the principle of confidence on which international relations had to be based, the Government thought that the interpretation it had given of the words "ultimate control by the judiciary" satisfied the requirements of legal certainty and clarity which had to prevail when international commitments were entered into in the human-rights field.

83. Lastly, if the requirements of legal clarity and certainty were fulfilled vis-à-vis the States Parties to the Convention and the supervisory bodies set up under the Convention, they were a fortiori satisfied vis-à-vis a Swiss citizen represented by a lawyer. The Government pointed out in this context that the applicant did not argue that the expression "ultimate control by the judiciary" was ambiguous but merely complained that in the instant case her only remedies had been an appeal to the Court of Cassation of the Vaud Cantonal Court and an appeal to the Federal Court, both of which had had only limited jurisdiction.

84. The Government submitted that for a Swiss citizen or her lawyer, familiar with the varied organisation of the courts of the cantons and the Swiss Confederation, the actual terms of the interpretative declaration were sufficient to put them on their notice that for persons subject to the jurisdiction of the Swiss courts, the judicial control secured in Article 6(1) of the Convention did not amount to control with full jurisdiction in cases where a criminal charge was determinable at first instance by an administrative authority.

5. As to the applicability to the instant case of the Court's decisions in the cases of Albert and Le Compte on 10 February 1983 and Öztürk on 27 May 1983

85. The Government considered that in the present case the applicant did in fact enjoy the "right of access to a court" which the Court implicitly derived from Article 6 of the Convention in its judgment in the Golder case, since she had access not only to the Court of Cassation of the Vaud Cantonal Court but also to the Swiss Federal Court. She therefore was entitled to a judicial determination of the dispute concerning her as regards questions of law.

86. At the same time the Government acknowledges that it is clear that in the instant case the applicant could not seek a judicial determination of the dispute as regards the facts, since in her case the findings of fact were made by an administrative authority (the Policy Board of the municipality of Lausanne), were final and could not be freely reviewed either by the Vaud Court of Criminal Cassation or by the Swiss Federal Court.

87. The Government stressed, however, that the decisive question whether, having regard to Switzerland's interpretative declaration - tantamount to a reservation - in respect of Article 6(1) of the Convention, the Court's decisions in the cases of Albert and Le Compte and Öztürk were binding on Switzerland remained to be determined. In the light of the foregoing considerations, the Government considered that they were not, because if the interpretative declaration had any point today, it was to remove the need, in a case such as the instant one, for control exercised by a judicial body with full jurisdiction.

88. Lastly, the Government pointed out that in the present case the judicial review carried out by the Court of Cassation of the Vaud Cantonal Court was fairly wide-ranging, since, on an application for review (recours en nullité), it reviewed the lawfulness of the proceedings, including "whether there are serious doubts about the facts found" (section 43(e) of the Vaud Municipal Decisions Act of 17 November 1969).

89. As to the rest of the special circumstances of the case, the Government referred to the judgment given in the applicant's case on 2 November 1982 by the Federal Court.

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IV. OPINION OF THE COMMISSION

90. The Commission has to determine whether the proceedings taken against the applicant were conducted in accordance with the provisions of the Convention. In this connection the Government refers to its declaration in respect of Article 6(1). The Commission will consider first of all whether this declaration does or not limit the jurisdiction of the Convention bodies to review the conformity of the criminal proceedings taken against the applicant with Article 6 of the Convention.

A. Scope of Switzerland's interpretative declaration

91. Article 64 of the Convention reads as follows:

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

92. Switzerland's interpretative declaration is worded as follows:

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

93. The Commission has already recognised that a declaration made by a State as an interpretative declaration may be termed a reservation if the essential conditions for a reservation are met (Temeltasch report of 5 May 1982, para. 73). It referred to the 1969 Vienna Convention on the Law of Treaties and to practice in public international law. It considered that "where a State makes a declaration, presenting it as a condition of its consent to be bound by the Convention and intending to exclude or alter the legal effect of some of its provisions, such a declaration, whatever it is called, must be assimilated to a reservation within the meaning of Article 64 of the Convention" and that "it is thus indispensable to interpret the intention of the author of the declaration" (ibid, para. 73). The State's intention should be established from the terms used in the declaration (ibid, para. 75) and from the context, including if necessary the preparatory work (ibid, para. 76 et seq).

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94. The construction of the declaration at issue raises problems of major importance. The Swiss declaration refers expressly to the determination of civil rights and obligations and criminal charges. According to the declaration, the safeguard of a fair trial provided for in Article 6 "is intended solely to ensure ultimate control by the judiciary over the acts of decisions of the public authorities relating to such rights or obligations or the determination of such a charge". If one judges by the clear wording of the declaration, the latter applies to proceedings relating to civil rights in the same way as to criminal charges.

However, the notion of ultimate control by the judiciary seems not to be the same in both cases. While ultimate judicial control of the acts of public authorities affecting civil rights seems to be a recognised principle in the administrative law of certain countries, this is very far from being so in criminal matters. As a general rule, criminal charges are brought before - and tried by - a court in the first place. In such cases the notion of "ultimate control by the judiciary" does not seem to have any generally accepted sense in the context of criminal proceedings.

95. In order to interpret the respondent Government's intention in making its declaration, having regard to the preparatory work which preceded Switzerland's ratification of the Convention, the Commission will proceed regardless of whether an interpretation which emerged only from the preparatory work and did not have any basis in the text of the declaration itself could have the consequence that the declaration be equated with a reservation.

96. The Government maintains that the preparatory work shows that its intention in making the interpretative declaration was to regard judicial control as being sufficient even if it was confined to a review of the lawfulness of the decisions of administrative authorities.

97. It bases that submission firstly on the wording of the Federal Decree of 7 October 1974 approving the Convention, section 1 of which provides that the Convention and certain of its protocols "are approved (...) with the following reservations and declarations (...)". It deduces from this - and in so doing refers to the definition of "reservation" in Article 2(1)(d) of the aforementioned Vienna Convention - that the word "approved" is significant in this context.

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98. It also refers in this connection to the Federal Council's reports on the Convention to the Federal Assembly of 9 December 1968 (see para. 70 above) and 23 February 1972 (see para. 74 above) and to the Federal Council's message of 4 March 1974 (see para. 75 above). In the second report it is stated that there was a "fresh difficulty" which "might lead Switzerland to make an additional reservation" in view of the Court's interpretation of Article 6(1) of the Convention in its judgment in the Ringeisen case. The Federal Court said that the Court had a tendency to give a broad meaning to the word "civil" in Article 6(1) of the Convention, and that this raised "tricky problems" for Switzerland, in particular as regards the administration of justice in the cantons; the Federal Council consequently considered that "it will probably be necessary to make a reservation concerning the scope of Article 6 when ratifying the Convention"; the Federal Council nonetheless decided to postpone consideration of the problem and to "determine" its attitude later, pointing out that "the wording of such a reservation will depend partly on the outcome of studies yet to be made of the subject and partly on any developments in the case-law of the Commission or the Court".

99. Subsequently, in its communication of 4 March 1974, the Federal Council, after examining in detail the implications for Switzerland of the Court's judgment in the Ringeisen case, recommended adopting the opinion expressed in that case by the minority of the Commission, as put to the Court by Mr Fawcett. On that view, Article 6(1) of the Convention was "intended solely to ensure ultimate control by the judiciary over the acts or decisions of the public authorities" and called "only for a fair hearing, not for a determination of the merits". The Federal Council suggested that "this interpretation" should be "laid down" in a "declaration" made when ratifying the Convention.

100. According to the Government, the real purpose of Switzerland's interpretative declaration was to "cover" proceedings which, pursuant to Article 345(1)(2) of the Swiss Criminal Code, were conducted before administrative authorities appointed by cantons to try certain minor offences (see para. 79 above). As proof of this, it cites the actual terms of the Federal Decree of 3 October 1974 approving the Convention (see para. 50 above) and the preparatory work preceding Switzerland's ratification of the Convention.

101. The Commission takes the view that a study of the preparatory work shows that the Swiss Government's declaration was intended as a kind of response to the situation arising as a result of the Court's judgment in the Ringeisen case. This in any event only confirms what the Commission has already found (see para. 94 above), namely that the wording of the declaration makes it clear that it is intended to have an effect with regard to proceedings relating to civil rights. The preparatory work on the other hand, gives no indication of how the declaration might be applied as a reservation in criminal proceedings. Since the applicant's case concerns criminal proceedings, the Commission must establish above all what the scope of the declaration is in respect of criminal proceedings.

102. After studying the wording of the declaration and the preparatory work the Commission is of the opinion that this by itself yields sufficient evidence for the conclusion to be reached that the declaration is a mere interpretative declaration which does not have the effect of a reservation. This sort of declaration may be taken into account when an article of the Convention is being interpreted; but if the Commission or the Court reached a different interpretation, the State concerned would be bound by that interpretation. A further point should be mentioned, moreover. If a State makes reservations and interpretative declarations at the same time, an interpretative declaration will only exceptionally be able to be equated with a reservation.

103. Before determining the scope of the declaration in issue, the Commission will consider the legal situation on the assumption that the declaration is a reservation such as is provided for in Article 64 of the Convention. By proceeding in this way the Commission will attempt to clarify the meaning which the respondent Government probably wished the declaration to have. If the conclusion were to be that the declaration could not be equated with a reservation within the meaning of Article 64, that would be a further argument in support of the view that it can only be termed a "mere interpretative declaration".

104. Article 64(1) does not allow "reservations of a general character". The Commission has already held that a reservation is of a general character "if it does not refer to a specific provision of the Convention or if it is worded in such a way that its scope cannot be defined" (Temeltasch report, para. 84).

105. In the instant case the Government maintains that the interpretative declaration in respect of Article 6(1) of the Convention is "clearly worded". The words "ultimate control by the judiciary" which appear in it "are a faithful paraphrase (as well as an extension of the criminal part of Article 6 of the European Convention on Human Rights) of the view expressed by Mr Fawcett on behalf of the minority of the Commission in the Ringeisen case at the public Court hearing in March 1971" (translation) (Observations of the Swiss Government of 14 December 1984, p. 8).

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106. It claimed that the wording of the interpretative declaration therefore had an "objective character" because it was based on "a published official view expressed within the Strasbourg supervisory system". Moreover, the words "ultimate control by the judiciary" were "sufficiently precise for the other States Parties to the Convention and for the supervisory bodies set up under it". Their purpose was to restrict the scope of the judicial control required under Article 6(1) of the Convention.

107. Thus, the Government continued, "ultimate control by the judiciary", ie a review of the lawfulness of decisions of public authorities (pourvoi en nullité) was sufficient, particularly in cases where an administrative authority imposed a fine and thus determined a criminal charge. The Government submitted that its interpretative declaration could not be regarded as being a "reservation of a general character". For her part, the applicant did not dispute these submissions but argued mainly that the declaration in question should not be equated with a reservation and that, even if it were to be, it could not have the same effects, seeing that it had been made in contravention of Article 64(2) of the Convention.

108. The Commission notes firstly, in this connection, that the words "ultimate control by the judiciary" in the Swiss interpretative declaration lack precision. They are ambiguous as regards the judicial control being contemplated. Is the latter to be confined to a review of the lawfulness of administrative authorities' acts in criminal matters or is to consist in a judicial review both of the law and of the facts?

109. Both hypotheses are theoretically possible if the wording of the declaration is taken as it is. It is true that if it is put in context, in particular if one first studies the preparatory work preceding ratification of the Convention, it becomes apparent that the intention was to restrict the concept of fair trial in Article 6(1) of the Convention to an ultimate judicial control that would not imply any decision on the merits. Furthermore, at the time the interpretative declaration was deposited, ie in 1974, the Court had not yet clearly stated that Article 6(1) of the Convention secured the "'right to a Court' (...) and (...) a determination by a tribunal of the matters in dispute (...), both for questions of fact and for questions of law" (see Eur. Court HR, Albert and Le Compte judgment of 10 February 1983, Series A No. 58, para. 29, in fine). The Commission acknowledges that the Swiss interpretative declaration would therefore serve no useful purpose if the Government undertook to ensure review by a tribunal of questions both of law and of fact.

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110. The uncertainty about the scope of the declaration is even greater if regard is had to criminal proceedings. The declaration mentions only Article 6(1). But it falls to be asked what the consequences would be for the safeguards of Article 6(2) and, above all, (3) if criminal proceedings were subject only to "ultimate control by the judiciary".

Several questions arise in this connection. Did Switzerland intend to avoid completely the obligations arising from the aforementioned safeguard, which are essential for any accused? Is it legitimate to suppose that in criminal matters responsibility for establishing the facts can be given to an administrative authority and that in that case the ultimate judicial control can be confined to the application of the law? On that basis it can easily be seen that in respect of the safeguards for an accused the Swiss declaration seems to have general, unlimited scope, the effect of which in Switzerland would be to deprive an accused almost entirely of the protection of the Convention.

111. There is nothing, however, to indicate that such was the respondent Government's intention when it made its declaration. It follows that even if the declaration could be equated with a reservation, it would not be in conformity with Article 64(1), given that in that case, at least as regards criminal proceedings, it would have to be regarded as a reservation of a general character.

112. By the terms of Article 64 of the Convention the second condition that a reservation has to satisfy is that it must contain a brief statement of the law concerned.

113. The Government acknowledges, and the Commission notes, that the interpretative declaration in respect of Article 6(1) of the Convention was not accompanied by a brief statement of the law or laws concerned, as stipulated in Article 64(2) of the Convention. According to the Government, given that procedure and the organisation of the courts are not unified in Switzerland, it would have been necessary, in order to achieve a maximum of precision, to describe all the procedures and remedies at cantonal and federal level in civil, criminal and even administrative matters. Such an exercise would not only have failed to satisfy the formal requirement of a "brief statement" but would have led to confusion rather than clarification.

114. While being aware of the practical difficulties to which the respondent Government refers, the Commission cannot regard the failure to comply with the requirement in Article 64(2) of the Convention as being justified (see mutatis mutandis the aforementioned Temeltasch report, para. 86). This obligation applies to all the States Parties to the Convention, without any distinction, irrespective of whether they are federal States or not and of whether or not they have unified procedural law.

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115. The Commission thus has to consider the legal consequences for Switzerland of the breach in the instant case of Article 64(2) of the Convention. In particular, the question that arises is whether the aforementioned interpretative declaration nonetheless has the legal effects of a validly made reservation.

116. The Commission points out that the formal requirement in Article 64(2) must be construed in conjunction with paragraph 1 of the same provision (cf Temeltasch report, para. 89). The latter paragraph requires that a reservation should relate to "any law then in force" and prohibits reservations of a general character. The details asked of member States making reservations should thus contribute to ensuring that no reservations of a general character are accepted.

117. The Commission has already held, however, that the scope of Article 64(2) is not confined to this. It noted as regards the other Swiss interpretative declaration that it was indisputable that the obligation on a State to append to its reservation a brief statement of the law or laws which it intended to keep in force - and which as a rule would not be compatible with the Convention - enabled the other Contracting Parties together with the Convention bodies and any other person concerned to be informed of the legislation in question. Moreover the Commission added that this was an important factor and that it was essential to have regard to the scope of the Convention provision whose application a State intended to prevent by means of a reservation or an interpretative declaration (see Temeltasch report, para. 90). The Commission considered that the need to include a statement of the law was much greater where a very wide provision of the Convention was concerned, such as Article 10, than in the case of a provision of more limited application, since as Article 6(3)(e). The Commission concluded that "in the former case, it [was] possible that a reservation made in breach of the requirements of Article 64(2) could be regarded as contrary to the Convention and as not having the effects intended by the State making it" (loc cit).

118. In the instant case the above consideration adds to the uncertainty about the scope of the Swiss declaration and confirms its vague, general character. It follows that as a reservation the declaration would in any event be incompatible with Article 64(1) and (2). The Commission considers that this is a further argument in support of the conclusion that the interpretative declaration cannot be equated with a reservation.

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119. For these reasons the Commission considers that the declaration made by the Swiss Government does not restrict the Convention bodies' jurisdiction to review whether the criminal proceedings against the applicant were compatible with Article 6 of the Convention.

B. Compliance with Article 6(1)

120. In the light of the foregoing, Article 6(1) of the Convention, which secures the right to a fair trial, applies, regardless of Switzerland's interpretative declaration in respect of it.

121. The applicant claims there was a breach of Article 6(1) of the Convention in that she was sentenced to pay a fine by an administrative authority which, she claims, was not an "independent and impartial tribunal". The applicant also claims that the provision was breached because it was the administrative authority - the Police Board of the municipality of Lausanne - which made the final findings of fact, which could not be reviewed by the appeal courts.

122. The Commission will consider the applicant's two complaints together, as they in fact both relate to her right to a fair trial, as secured in Article 6(1) of the Convention.

123. Article 6(1) provides that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair (...) hearing (...) by an independent and impartial tribunal (...)".

124. Leaving aside the question of assessing the validity of the aforementioned Swiss interpretative declaration, the two parties do not dispute the applicability of Article 6(1) to the impugned proceedings. Having regard to the criteria laid down by the Court of Human rights, the Commission finds that the offence committed by the applicant is a "criminal" matter within the meaning of Article 6(1) (Eur. Court HR, Öztürk judgment of 21 February 1984, Series A No. 73, para 50 et seq).

125. Since this provision applies, it falls to be determined whether the applicant's case was considered by a tribunal which satisfied the conditions laid down in it. Three bodies heard her case: the Police Board of the municipality of Lausanne, the Court of Criminal Cassation of the Vaud Cantonal Court and the Federal Court.

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126. The Commission accepts that a State Party to the Convention may relieve its courts of the responsibility for prosecuting and punishing minor offences like the one committed by the applicant in breach of a police regulation. It was compatible with Article 6(1) that this duty should devolve upon an administrative authority, so long as the person who was the subject of the proceedings could appeal against any decision so taken in his regard to a tribunal affording the safeguards provided for in Article 6(1) (see mutatis mutandis Eur. Court HR, judgment of 23 June 1981 in the Le Compte, Van Leuven and De Meyere case, Series A, No. 43, para 51; Öztürk judgment, loc. cit, para. 56); in other words, so long as the person concerned can have a determination by a tribunal of the matters in dispute, both for questions of fact and for questions of law (Eur. Court HR, Albert and Le Compte judgment, loc. cit. para. 29 in fine).

127. In the instant case the Commission finds that the applicant was fined by an administrative authority, the Police Board of the municipality of Lausanne. She appealed against the municipal decision to the Court of Criminal Cassation of the Vaud Cantonal Court, which, under the applicable legislation, can review both the lawfulness of the proceedings, on an application for review (recours en nullité), and the correctness of the application of the law, on a general appeal (recours en réforme). It does not, however, have jurisdiction to consider afresh the facts of the case as found at first instance. Similarly, it is apparent from the respondent Government's observations and from the Federal Court's judgment in the present case that the Federal Court has no jurisdiction as regards the facts either.

128. The respondent Government acknowledges that the applicant had a right to determination by a tribunal of the matters in dispute in her case as far as questions of law were concerned, but that this was not so as regards questions of fact, as the Police Board of the municipality of Lausanne had made the final findings of fact, without there having been any subsequent judicial review.

CONCLUSION

129. The Commission concludes unanimously that in the instant case there was a breach of Article 6(1) of the Convention because the applicant was not able to secure a determination by a tribunal of the questions of fact in her case.

The Secretary of the Commission — The President of the Commission

(H C KRUGER) — (C A NØRGAARD)