AS TO THE ADMISSIBILITY OF

Application No. 15668/89
by W.K.
against Switzerland

The European Commission of Human Rights sitting in private on
6 December 1991, the following members being present:

MM.C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
G. SPERDUTI
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs.G.H. THUNE
SirBasil HALL
MM.F. MARTINEZ
C.L. ROZAKIS
Mrs.J. LIDDY
MM.L. LOUCAIDES
J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ
B. MARXER

Mr.H.C. KRÜGER, Secretary to the Commission,

Having regard to Article 25 of the Convention for the Protection
of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 14 August 1989 by
W.K. against Switzerland and registered on 23 October 1989 under file
No. 15668/89;

Having regard to :

-the report provided for in Rule 47 of the Rules of Procedure of
the Commission;

-the observations submitted by the respondent Government on
14 June 1991 and the observations in reply submitted by the
applicant on 27 August 1991.

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case, as submitted by the parties, may be
summarised as follows:

The applicant, a Swiss citizen born in 1949, is a businessman
residing at P. in Switzerland. Before the Commission he is represented
by Mr. E. Pfister, a lawyer practising at Lachen.

A.Particular circumstances of the case

On 22 January 1985 between 4 and 5 a.m. the applicant was driving on the N3 motorway from Zurich to P. in the Canton of Schwyz. Shortly before leaving the motorway, two police officers, D. and K., of the Canton of Zurich police force drove up behind him. As he was driving suspiciously slowly, they followed him when he left the motorway for P.; he then disregarded a traffic sign, whereupon they stopped him.

The applicant then underwent a breathalyser test. When this proved to be positive, the police officers ordered the taking and an examination of a sample of the applicant's blood. The police officers then took him to the P. District Hospital where a blood sample was taken by the doctor on duty. The blood sample was analysed by the Institute of Legal Medicine (Gerichtsmedizinisches Institut) of the Canton of Zurich which found a blood alcohol concentration of 1,61 o/oo.

II.

Criminal proceedings were instituted against the applicant before the Höfe District Office (Bezirksamt). On 25 January 1985 the police officer K. testified as follows:

[Translation]

"We left the motorway on the P. exit. We noticed how the car, a Toyota, in front of us at the end of the motorway exit drove over the 'stop' sign at a speed of about 20 km/h and then turned left in the direction of P./Canton of Schwyz. This driving manoeuvre disturbed nobody, as at this time there was no traffic on the Cantonal road."

[German]

"Wir verliessen die Autobahn durch die Ausfahrt P.. Dabei stellten wir fest, wie der vor uns fahrende Personenwagen Toyota, bei der Einmündung der Autobahnausfahrt in die Kantonsstrasse den dortigen Stop überfuhr. Der Lenker des Personenwagens Toyota überfuhr den Stop mit einer Geschwindigkeit von ca. 20 km/h und bog nach links in Richtung P./SZ ab. Durch dieses Fahrmanöver wurde niemand behindert, da zu diesem Zeitpunkt auf der Kantonsstrasse kein Verkehr herrschte."

On 7 February 1985 the case-file was transferred to the applicant for consultation.
On 12 February 1985 the applicant was questioned by the investigating judge at the Höfe District Office. On the same day, he wrote to the investigating judge, complaining that the evidence had been unlawfully obtained.

On 20 February 1985 the police officer D. made the following statement before the Höfe District Office:

[Translation]

"I was in the passenger seat of the police car. We were on traffic control duty. We said to each other that we would control him, too. We decided to control (the applicant) only after the exit. I no longer know exactly whether it was on account of the weather or the traffic. From time to time we stop vehicles which we intend to control only after leaving the motorway. This for security reasons. (The applicant) then drove to the 'stop' sign. Without stopping, he drove over it and turned left towards P. ... It was not a case which necessarily had to be controlled on the motorway. It was a pure routine control on the basis of slow driving and driving over the 'stop'."

[German]

"Ich war Beifahrer im Polizeiwagen. Wir waren auf Verkehrsüberwachung. Wir sagten noch zueinander, den kontrollieren wir noch. Wir entschlossen uns, (den Beschwerdeführer) erst nach der Ausfahrt zu kontrollieren. Ich weiss es nicht mehr genau, ob es wegen des Wetters oder des Verkehrs war. Wir halten ab und zu Fahrzeuge, die wir kontrollieren wollen, erst nach der Autobahn auf. Dies aus Sicherheitsgründen. Küng fuhr dann auf den Stop zu. Ohne anzuhalten überfuhr er diesen und fuhr nach links Richting P. ... Es war kein Fall, der unbedingt auf der Autobahn zu kontrollieren war. Es war eine reine Routinekontrolle aufgrund der langsamen Fahrweise und des Stopüberfahrens."

On 26 February 1985 the Höfe District Office informed the applicant that the investigations were closed; he was given ten days to consult the case-file and, if necessary, to file further supplementary requests (Ergänzungsbegehren). A further time-limit of ten days was granted on 13 March 1985.

On 9 April 1985 the Höfe District Office indicted the applicant of the violation of traffic regulations and of driving under the influence of alcohol. The bill of indictment stated that the applicant had the possibility to request inter alia the taking of evidence (Beweismassnahmen zu beantragen).

On 29 April 1985, after a hearing, the Höfe District Court (Bezirksgericht) convicted the applicant of disregarding a traffic sign, but acquitted him of the offence of driving under the influence of alcohol; the Court found in particular that the police officers of the Canton of Zurich police force had not been competent to order the blood examination.

III.

The Public Prosecutor (Staatsanwalt) of the Canton of Schwyz appealed against this decision. On 14 May 1987 the Cantonal Court (Kantonsgericht) of the Canton of Schwyz terminated the proceedings with regard to the offence of disregarding a traffic sign. On the other hand, it convicted the applicant of driving under the influence of alcohol and sentenced him to a fine of 1,500 SFr. The Court thereby relied on the results of the chemical and medical examination of the sample of the applicant's blood.

Against this decision the applicant filed a public law appeal (staatsrechtliche Beschwerde). He complained inter alia with reference to Section 22 of the Schwyz Regulations on the powers of the judicial police (Schwyzerisches Reglement über die Organisation der gerichtlichen Polizei; see below, Relevant domestic law and practice) that the Zurich police had not been competent to stop him in the Canton of Schwyz and to order the taking of a blood sample.

IV.

The applicant's public law appeal was dismissed by the Federal Court (Bundesgericht) on 10 December 1987. The applicant was notified of the decision on 16 December 1987. The written reasons of the decision, numbering sixteen pages, were served on the applicant on 24 February 1989.

In its decision the Federal Court first considered that the lower court had had sufficient evidence to prove the applicant's guilt so that it was unnecessary to call further witnesses or take further

evidence.

The Court then found that not in every case illegally obtained evidence had to be excluded. If only formal conditions concerning the taking of evidence had not been met, it would be disproportionate completely to exclude such evidence. Thus, illegally obtained evidence could not be considered inadmissible if it could have been obtained legally under other circumstances.

The Court further considered that the taking of a blood sample constituted an interference with the applicant's personal freedom but that Section 55 of the Road Traffic Act (Strassenverkehrsgesetz) and Sections 138 et seq. of the Ordinance on the admittance of persons and vehicles to the road traffic (Verordnung über die Zulassung von Personen und Fahrzeugen zum Strassenverkehr; see below, Relevant domestic law and practice) provided a sufficient legal basis for it.

In the Federal Court's view, the lower court could without arbitrariness consider that Section 57bis of the Road Traffic Act and the Agreement between the Cantons of Schwyz and Zurich on the functions of the motorway police on the N3 (Vereinbarung über die Ausübung der Autobahnpolizei auf der Nationalstrasse 3; see below Relevant domestic law and practice) ensured mainly cantonal sovereignty with regard to coordinating questions of policing, but was not intended to grant additional protection to motorists driving under the influence of alcohol. With reference to its case-law the Federal Court thus found that the special cantonal jurisdiction regulated in Section 57bis of the Road Traffic Act could not in principle exclude the admissibility of a blood sample in order to determine the drunkenness of a motorist.

With regard to the necessity of the taking of a blood sample the Federal Court noted that the police officers' attention had been drawn to the applicant on account of the manner in which he drove. The police officers followed him to the exit though they did not want to stop him before the end of the exit. As the applicant then drove over the 'stop' sign, the police officers could only stop him on the Cantonal road. Thus, the question of hot pursuit according to Section 356 of the Penal Code arose (see below, Relevant domestic law and practice). The Federal Court also considered that in any event the Schwyz Cantonal Police could quite legally have ordered the taking of evidence.

With regard to the applicant's complaint that the police were not competent to order a blood examination, the Court noted that the persons mentioned in Section 22 of the Schwyz Regulations on the powers of the judicial police could not be reached at night, and one could not wait too long with a blood examination. The Court further found:

[Translation]

"It is therefore sensible not rigidly to consider the basic rule of Section 22 of the Police Regulations in isolation but in connection with the exceptional circumstance mentioned in Section 4 para. 3 which permits the police in the case of "imminent danger" immediately to take measures which cannot be postponed unless the suspected person himself insists formally to be brought [before the investigating authorities]; there can be no question here of an arbitrary interpretation by the Cantonal Court."

[German]

"Es ergibt deshalb durchaus einen vernünftigen Sinn, die Grundregel von § 22 des Polizeireglements nicht als starre Einzelvorschrift zu betrachten sondern im Zusammenhang mit dem Ausnahmetatbestand von § 4 Abs. 3 zu sehen, welcher der Polizei bei 'Gefahr im Verzug' erlaubt, die unaufschiebbaren Massnahmen sofort zu treffen, sofern der Verdächtigte nicht seinerseits auf

einer förmlichen Vorführung besteht; von einer willkürlichen Auslegung durch das Kantonsgericht kann dabei keine Rede sein."

The Court also saw no issue with regard to the applicant's complaints under Article 6 para. 2 of the Convention. Under Article 8 of the Convention the Court considered that the applicant's blood sample had been taken in the framework of the investigations as provided by law (im Rahmen gesetzlich vorgesehener Ermittlungs-massnahmen) and this measure was in the public interest and necessary.

B.Relevant domestic law and practice

I.

As regards the powers of the police, Section 57bis of the Road Traffic Act (Strassenverkehrsgesetz) states as follows:

[Translation]

"Section 57bis. Police on motorways ... 2. The competent motorway police maintains in its area, regardless of cantonal borders, order and security and undertakes police investigations. In addition, in the case of criminal offences of any kind it takes those measures which cannot be postponed and which must be pursued on the motorway. In case of criminal offences the competent motorway police promptly ensures that the authorities of the cantonal area take further measures ..."

[German]

"Artikel 57bis. Polizei auf Autobahnen ... 2. Die zuständige Autobahnpolizei besorgt auf ihrem Abschnitt unabhängig von den Kantonsgrenzen den Ordnungs- und Sicherheitsdienst und die polizeiliche Fahndung sowie bei Straftaten jeder Natur die unaufschiebbaren Massnahmen, die auf dem Autobahngebiet vorzunehmen sind. Sie veranlasst bei Straffällen unverzüglich die Organe des Gebietskantons zu den weiteren Massnahmen ..."

On the basis of Section 57bis the Cantons of Schwyz and Zurich concluded an Agreement on the functions of the motorway police on the N3 (Vereinbarung über die Ausübung der Autobahnpolizei auf der Nationalstrasse 3). Section 5 states as follows:

[Translation]

"Section 5

(1)The motorway police of the original Canton is competent for police investigations as well as in respect of all criminal offences for measures which cannot be postponed and which must be undertaken on the motorway section of the cantonal area.

(2)Persons who in cases of offences of common criminal law are caught in the act, or who are suspected thereof, or in respect of whom there is a warrant of arrest, or whose arrest has been ordered in some other way, must be brought by the motorway police to the criminal investigating authorities of the cantonal area.

(3)The motorway police promptly ensures in the case of criminal offences that the investigating authorities of the cantonal area undertake further measures."

[German]

"(1)Der Autobahnpolizei des Stammkantons obliegen die polizeiliche Fahndung, sowie bei Straftaten jeder Natur die unaufschiebbaren Massnahmen, die auf der Autobahnstrecke des Gebietskantons vorzunehmen sind.

(2)Personen, die bei strafbaren Handlungen des gemeinen Rechts auf frischer Tat betroffen oder deren Verübung verdächtigt oder die zur Verhaftung ausgeschrieben sind oder deren Festnahme auf andere Weise angeordnet worden ist, sind von der Autobahnpolizei den Strafuntersuchungsbehörden des Gebietskantons zuzuführen.

(3)Die Autobahnpolizei veranlasst bei Straffällen unverzüglich die Untersuchungsorgane des Gebietskantons zu den weiteren Massnahmen."

Section 55 of the Road Traffic Act states:

[Translation]

"Section 55. Drunkenness
...
2. Motorists and persons on the street involved in a car accident must, if there are indications of drunkenness, submit to appropriate examinations. The taking of a blood sample may be ordered ..."

[German]

"Artikel 55. Angetrunkenheit
...
2. Fahrzeugführer und an Unfällen beteiligte Strassenbenützer, bei denen Anzeichen von Angetrunkenheit vorliegen, sind geeigneten Untersuchungen zu unterziehen. Die Blutprobe kann angeordnet werden ..."

Based thereupon the Federal Council has enacted the Ordinance on the admittance of persons and vehicles to the road traffic (Verordnung über die Zulassung von Personen und Fahrzeugen zum Strassenverkehr) which in Sections 138-142 deals with the principles and procedures for determining drunkenness. Section 139 deals in particular with the taking of a blood sample.

Section 356 of the Penal Code (Strafgesetzbuch) concerns "hot pursuit" (Nacheile) and states:

[Translation]

"(1)The police officers are empowered in urgent cases to pursue an accused or a convicted person to the territory of another Canton and arrest him there.

(2)The arrested person shall immediately be brought before the nearest officer of the Canton competent to issue a warrant of arrest. The officer shall prepare minutes of the arrested person's statement and take further necessary measures."

[German]

(1)Die Beamten der Polizei sind berechtigt, in dringenden Fällen einen Beschuldigten oder einen Verurteilten auf das Gebiet eines anderen Kantons zu verfolgen und dort festzunehmen.

(2)Der Festgenommene ist sofort dem nächsten zur Ausstellung eines Haftbefehls ermächtigten Beamten des Kantons zur Festnahme zuzuführen. Dieser hört den Festgenommenen zu Protokoll an und trifft die erforderlichen weiteren Verfügungen."

II.

Section 22 of the Schwyz Regulations on the powers of the judicial police (Schwyzerisches Reglement über die Organisation der gerichtlichen Polizei) provides that only an investigating judge or the District Court may order an analysis of the blood alcohol concentration. If these authorities cannot be reached the person concerned must be brought before the District Doctor (Bezirksarzt) or his deputy.

III.

According to Section 84 para. 1 (a) of the Federal Judiciary Act (Organisationsgesetz) the public law appeal serves as a remedy to complain about the violation of constitutional rights. The public law appeal may be directed in particular against a cantonal decision (Section 84 of the Federal Judiciary Act). If the Federal Court decides to grant the public law appeal, the Court is competent to quash the contested decision and order a new decision. The previous instance is then obliged to take into consideration the reasons given by the Federal Court (see Arrêts du Tribunal fédéral 100 Ia 30).

COMPLAINTS

1.The applicant complains that he had to wait approximately 14 months for the written reasons of the decision of the Federal Court to be served on him.

He further complains that the only evidence proving his guilt - the examination of his blood alcohol - was obtained illegally in that the Zurich Cantonal police were not competent to stop him and to order the taking of a blood sample. He also complains that in the ensuing court proceedings he was not allowed to put questions to the policemen and that the Federal Court relied, to the applicant's disadvantage, on the written statements of the police officers.

In this respect the applicant relies on Article 6 paras. 1, 2 and 3 (d) of the Convention.

2.Under Article 8 of the Convention he complains that the stopping by the policemen who ordered the alcohol breathing test and the taking of a blood sample constituted an interference with his private life for which there was no legal basis.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 14 August 1989 and registered on 23 October 1989.

On 8 April 1991 the Commission decided to communicate the application to the respondent Government and invite them to submit written observations on the admissibility and merits of the application.

The Government's observations were received by letter dated 14 June 1991. The applicant's observations in reply were dated 27 August 1991.

THE LAW

1.The applicant complains under Article 6 paras. 1, 2 and 3 (d)

(Art. 6-1, 6-2, 6-3-d) of the Convention of the criminal proceedings in which he was involved. These provisions state, insofar as relevant:

"1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...

2.Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3.Everyone charged with a criminal offence has the following minimum rights:

...

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ..."

a)Under Article 6 para. 1 (Art. 6-1) of the Convention the applicant complains that he was not heard within a reasonable time. He complains in particular that he had to wait fourteen months for the written reasons of the decision of the Federal Court to be served on him.

The applicant submits that Article 6 para. 1 (Art. 6-1) of the Convention is applicable to the proceedings before the Federal Court as the latter could have quashed the previous decision and thus determined a criminal charge within the meaning of Article 6 para. 1 (Art. 6-1). Moreover, the period to be considered under this provision must include the preparation of the written reasons of the decision, since only these reasons enable the applicant to understand the judgment.

The Government invite the Commission to state whether public law appeal proceedings before the Federal Court fall to be considered under Article 6 para. 1 (Art. 6-1) of the Convention. Reference is made in particular to the Convention organs' case-law (see Eur. Court H.R., Buchholz judgment of 6 May 1981, Series A no. 42, p. 15, para.48; No. 8410/78, Dec. 13.12.79, D.R. 18 p. 216).

Even assuming that Article 6 (Art. 6) was applicable, the Government contend that the applicant does not complain of the period leading up to the Federal Court's decision. Moreover, with reference to the Commission's case-law it is submitted that the period to be considered under Article 6 para. 1 (Art. 6-1) of the Convention ends when the applicant is notified of the decision (see Ventura v. Italy, Comm. Report 15.12.80, D.R. 23 p. 5, at p. 43, para. 196; Huber v. Austria, Comm. Report 8.2.73, D.R. 2 p. 11, at p. 21, para. 73). In the present case this occurred on 16 December 1987. On the basis of this notification the outcome of the proceedings became clear to the applicant. In the Government's opinion it cannot therefore be said that the proceedings lasted too long.

The Commission, having regard to the parties' submissions under Article 6 para. 1 (Art. 6-1) of the Convention concerning the length of the proceedings, considers that these complaints raise complex issues of fact and law which can only be resolved by an examination of the merits. This part of the application cannot, therefore, be declared manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other grounds for inadmissibility have been established.

b)Under Article 6 para. 1 (Art. 6-1) the applicant further complains that the only evidence proving his guilt - the examination of his blood alcohol - was obtained unlawfully in that the Zurich

Cantonal police were not competent to stop him and order the taking of a blood sample.
The applicant refers in this respect to Section 57bis of the Road Traffic Act and Section 5 of the Schwyz/Zurich Agreement. The applicant further refers to the statements of the police officers of 25 January and 20 February 1985 the latter having been made in the absence of the applicant and his lawyer. These statements confirm that there was no urgency and that the police officers undertook a mere routine control. In any event, paragraph 2 of Section 356 of the Penal Code would have obliged the Zurich police officers to bring the applicant before an investigating judge.

The applicant further complains under Article 6 paras. 1 and 3 (d) (Art. 6-1, 6-3-d) of the Convention that in the court proceedings he was not allowed to put questions to the police officers and that the Federal Court relied, to the applicant's disadvantage, on their written statements. He had no occasion to question the police officers in the District Court proceedings as he did not know that on 20 February 1985 one police officer had been questioned. In the applicant's opinion, under Article 6 (Art. 6) of the Convention the defence must have the possibility to call in question any evidence or testimony brought before the court on which the latter relies.

The Government recall that the Federal Court considered Section 55 of the Road Traffic Act and Sections 138 et seq. of the Ordinance based thereupon as constituting a sufficient legal basis to oblige motorists to submit to a breath analysis and the taking of a blood sample.

While the Zurich authorities did exceed their powers concerning territorial jurisdiction by a few metres, the Government contest that the evidence obtained does not comply with the requirements under the Convention. The Government note that the policemen became aware of the applicant as he was driving particularly slowly, and partly on the side of the road. As he disregarded the "stop" sign, the policemen suspected drunkenness and pursued him. Under these circumstances, Section 356 of the Penal Code entitled the policemen to pursue the applicant. In the light of the Commission's Report in the Schenk case (Schenk v. Switzerland, Comm. Report 10.5.87, Eur. Court. H.R., Series A no. 140, p. 39, para. 59) the Government conclude that the possible disregard of rules ensuring cantonal sovereignty in a Federal State cannot amount to a breach of Article 6 para. 1 (Art. 6-1) of the Convention.

As regards the questioning of witnesses, the Government submit that in the District Court proceedings the applicant frequently had the possibility to question the police officers. In any event the Government cannot see how the questioning of these persons could modify the results of the breath analysis and the blood sample.

With regard to the judicial decisions of which the applicant complains, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its established case-law (see e.g. No. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

It is true that the applicant complains under Article 6 paras. 1 and 3 (d) (Art. 6-1, 6-3-d) of the Convention that the evidence proving his guilt was obtained unlawfully and that he could not put questions to certain witnesses.

According to the Convention organs' case-law the admissibility of evidence is primarily a matter for regulation by national law and, as a rule, it is for the national courts concerned to assess the evidence before them. Furthermore, the Convention does not exclude evidence obtained unlawfully under domestic law as a matter of principle and in the abstract. The Convention organs' task is to ascertain whether the proceedings, considered as a whole, including the way in which evidence was taken, were fair (see Eur. Court H.R., Asch judgment of 26 April 1991, Series A no. 203, para. 26; Schenk v. Switzerland, Comm. Report, loc. cit., p. 37 et seq., para. 56, p. 39, para. 59).

The Commission has first examined the manner in which in the domestic proceedings the evidence leading to the applicant's conviction, in particular a sample of the applicant's blood, was assessed.

The Commission has had regard to the Federal Court's decison of 10 December 1987 according to which Section 55 of the Road Traffic Act and Sections 138 et seq. of the Ordinance based thereupon sufficed in principle as a legal basis to obtain a blood sample. Moreover, the Federal Court and also the Government in their submissions to the Commission both considered that the purpose of Section 57bis of the Road Traffic Act concerning the powers of the motorway police was to ensure cantonal sovereignty in a Federal State and not to grant additional protection to motorists driving under the influence of alcohol. Thus the Federal Court expressly found that Section 57bis of the Road Traffic Act could not in principle exclude the admissibility of a blood sample in order to determine drunkenness.

As regards the issue whether the doctor on duty at the P. District Hospital was the competent authority to take the blood sample, the Commission again notes the Federal Court's decision of 10 December 1987 according to which the relevant Section 22 of the Schwyz Police Regulations, while in principle providing for a District Doctor or his deputy to take the blood sample, should not be interpreted in isolation; rather Section 22 had to be read together with Section 4 para. 3 which permitted the police, in cases of imminent danger, to take urgent measures.

As a result, in the light of the above considerations and in view of the domestic authorities' primary responsibility in the assessment of evidence, the Commission does not find that the domestic authorities unfairly admitted evidence before them which eventually led to the applicant's conviction. In this respect therefore, there is no indication that the applicant did not have a fair trial within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission has next examined the applicant's complaint that he could not put questions to the police officers concerned. The Commission recalls in this respect that Article 6 paras. 1 and 3 (d) (Art. 6-1, 6-3-d) require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him (see Eur. Court H.R., Asch judgment, loc. cit., para. 28).

However, it is in the Commission's opinion clear that the decisive evidence in the criminal proceedings was the sample of the applicant's blood. The police officers' statements did not constitute the main means of evidence on which the domestic authorities based their decision.

As a result, in the circumstances of the case, there is also in this respect no indication that the applicant did not have a fair trial within the meaning of Article 6 paras. 1 and 3 (d) (Art. 6-1, 6-3-d) of the Convention.

Insofar as the applicant also relies under Article 6 para. 2 of (Art. 6-2) the Convention, the Commission finds no issue under this provision.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2.Under Article 8 (Art. 8) of the Convention the applicant complains that the stopping by the policemen who ordered the alcohol breathing test and the taking of a blood sample constituted an interference with his private life for which there was no legal basis. Article 8 (Art. 8) of the Convention provides:

"1.Everyone has the right to respect for his private and family life, his home and his correspondence.

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

The Government contend that the obligation imposed on a motorist to submit to a blood test when suspected of driving under the influence of alcohol is justified under Article 8 para. 2 (Art. 8-2) of the Convention as being necessary for the protection of the rights and freedoms of others. In the Government's opinion the legal basis for this measure can be found in Section 356 of the Penal Code and Sections 55 and 57 of the Road Act.

The Commission considers that the taking of a blood sample constitutes an interference with the applicant's right to respect for his private life within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention (see No. 8239/78, X v. the Netherlands, Dec. 4.12.78, D.R. 16 p. 184). Its task is, therefore, to examine whether this interference was justified under Article 8 para. 2 (Art. 8-2) of the Convention.

The first issue is whether the interference was "in accordance with the law" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention. According to the Convention organs' case-law "it is in the first place for the national authorities, notably the courts, to interpret and apply the domestic law: the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection" (see Eur. Court H.R., Barthold judgment of 25 March 1985, Series A no. 90, p. 22, para. 48).

In the present case the Commission recalls the Federal Court's decision of 10 December 1987. According to that decision Section 55 of the Road Traffic Act and Sections 138 et seq. of the Ordinance based thereupon sufficed in principle as a legal basis to obtain a blood sample. Section 57bis of the Road Traffic Act could not serve to exclude the admissibility of such a blood sample in order to determine a motorist's drunkenness. Finally, with regard to the issue of the competent doctor taking the blood sample, Section 22 of the Schwyz Police Regulations, taken together with Section 4 para. 3, permitted the police, in case of imminent danger, to take urgent measures.

In the Commission's opinion these considerations apply to its examination under Article 8 para. 2 (Art. 8-2) of the complaints at issue. It follows that the measures complained of were "in accordance with the law" within the meaning of this provision. The Commission moreover considers that the taking of a blood sample serves to determine drunkenness of motorists and thus protects road safety and

other persons (see No. 8239/78, loc. cit.). The measure was, therefore, "necessary in a democratic society in the interests of ... public safety ... for the prevention of disorder or crime (and) for the protection of the rights and freedoms of others" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits of the case, the applicant's complaint under Article 6 para. 1 (Art. 6-1) of the Convention about the length of the proceedings; and

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)