

## EUROPEAN COMMISSION OF HUMAN RIGHTS

Application No. 21353/93

B. C.

against

Switzerland

## REPORT OF THE COMMISSION

(adopted on 3 September 1996)

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#### I. INTRODUCTION

1. The following is an outline of the case as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

##### A. The application

2. The applicant is a Swiss citizen, born in 1930 and resident in

3. Fribourg. He was represented before the Commission by Mr. M. Portmann, a lawyer practising in Fribourg.

4. The application is directed against Switzerland. The respondent Government were represented by their Deputy Agent, Mr. Ph. Boillat, Head of the European Law and International Affairs Section of the Federal Office of Justice.

5. The case concerns the search of the applicant's house and absence of an effective remedy in this respect. The applicant invokes Articles 8 and 13 of the Convention.

##### B. The proceedings

6. The application was introduced on 2 October 1992 and registered on 9 February 1993.

7. On 27 February 1995 the Commission decided, pursuant to Rule 48 para. 2 (b) of its Rules of Procedure, to give notice of the application to the respondent Government and to invite the parties to submit written observations on the admissibility and merits of the applicant's complaints under Articles 8 and 13 of the Convention. It declared the remainder of the application inadmissible.

8. The Government's observations were submitted on 28 April 1995. The applicant replied on 26 June 1995.

9. On 27 November 1995 the Commission declared admissible the applicant's complaints under Articles 8 and 13 of the Convention.

10. The text of the Commission's final decision on admissibility was sent to the parties on 6 December 1995 and they were invited to submit such further information or observations on the merits as they wished.

11. After declaring the case admissible, the Commission, acting in accordance with Article 28 para. 1 (b) of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement. In the light of the parties' reaction, the Commission now finds that there is no basis on which such a settlement can be effected.

C. The present Report

12. The present Report has been drawn up by the Commission in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present:

Mrs. G.H. THUNE, Acting President  
Mr. S. TRECHSEL  
Mrs. J. LIDDY  
MM. E. BUSUTTIL  
G. JÖRUNDSSON  
A.S. GÖZÜBÜYÜK  
A. WEITZEL  
J.-C. SOYER  
H. DANELIUS  
F. MARTINEZ  
C.L. ROZAKIS  
L. LOUCAIDES  
J.-C. GEUS  
M.P. PELLONPÄÄ  
G.B. REFFI  
M.A. NOWICKI  
I. CABRAL BARRETO  
B. CONFORTI  
N. BRATZA  
I. BÉKÉS  
J. MUCHA  
D. SVÁBY  
G. RESS  
A. PERENIC  
C. BÎRSAN  
P. LORENZEN  
K. HERNDL  
E. BIELIUNAS  
H.G. SCHERMERS

13. The text of this Report was adopted on 3 September 1996 by the Commission and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 2 of the Convention.

14. The purpose of the Report, pursuant to Article 31 of the Convention, is:

- (i) to establish the facts, and

- (ii) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

15. The Commission's decisions on the admissibility of the application are annexed as Appendices I and II.

16. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

## II. ESTABLISHMENT OF THE FACTS

### A. The particular circumstances of the case

17. On 5 December 1991 the radio communications surveillance unit of the Swiss Post, Telephone and Telegraph Company (Sektion Funküberwachung der Generaldirektion PTT) located a private telephone conversation being held by means of a cordless telephone which did not conform to the PTT standards. The conversation was located on a wave-band reserved for civil and military aviation. The surveillance unit recorded the conversation and established that it was carried out on the line to which the applicant had subscribed. The surveillance unit informed the appropriate PTT authority about this fact.

18. The applicant was suspected of having committed a contravention (Widerhandlung) within the meaning of Section 42 of the 1922 Telegraph and Telephone Communications Act (Bundesgesetz betreffend den Telegraf- und Telefonverkehr). On 11 December 1991 the PTT district telecommunications administration (Fernmeldekreisdirektion) in Berne instituted criminal proceedings against the applicant pursuant to the 1974 Administrative Criminal Law Act (Bundesgesetz über das Verwaltungsstrafrecht).

19. On 13 December 1991 the head of the PTT telecommunications administration in Berne issued a warrant to search the applicant's house pursuant to Sections 48 et seq. of the Administrative Criminal Law Act. According to the warrant the aim of the search was to find and seize the unauthorised cordless telephone.

20. On 21 January 1992 at 9.50 a.m. two PTT officials came to the applicant's door. The applicant informed them that he had tested a cordless telephone once in the past and that he no longer had it. When he was told that by virtue of the warrant the officials were entitled to enter his house, he consented to the search.

21. The PTT officials then summoned an officer of the cantonal police, and the applicant let the three persons enter the entrance hall. The applicant in fact used only one room of his house, the remaining five rooms being rented to a third person.

22. In the entrance hall the applicant was briefed on the legal aspects of the search. He also consulted the file concerning his case and made phone calls with a lawyer and with an official of the PTT telecommunications administration in Berne.

23. As requested by the applicant, the search was carried out by a single PTT official in his presence. The official searched every single room of the two-storey building, including the cellar areas. He restricted himself to checking whether the telephones and TV sets in the applicant's house complied with the PTT standards. He did not touch any objects, open any drawers or consult any documents. At 11.55 a.m. a record was drawn up and signed by both the applicant and

the investigating official. A copy thereof was immediately handed over to the applicant. The protocol stated, inter alia, that a complaint could be lodged against the search pursuant to Sections 26 and 28 of the Administrative Criminal Law Act.

24. On 24 January 1992 the applicant introduced a complaint with the Federal Court (Bundesgericht) pursuant to Section 26 para. 1 of the Administrative Criminal Law Act. He claimed that the search of his house was unlawful, and that it should therefore be declared null and void.

25. On 27 March 1992 the Federal Court rejected the complaint. It held that since the search no longer infringed the applicant's rights, there was no further legal interest in his protection in this respect. The judgment was served on 3 April 1992.

26. By its decisions of 14 August 1995 and 26 September 1995 the Federal Communications Office (Bundesamt für Kommunikationen) fined the applicant 150 SFr for a contravention within the meaning of Section 42 of the Telegraph and Telephone Communications Act. The applicant was charged the costs of the proceedings.

27. The applicant applied for a judicial review of the decisions by which he was fined. On 18 December 1995 the Saane District Court (Bezirksgericht) discontinued the proceedings as the contravention at issue had become statute-barred.

#### B. Relevant domestic law

28. House searches in the context of administrative criminal proceedings are governed by the 1974 Administrative Criminal Law Act. The relevant provisions stipulate as follows:

##### Section 20

(Translation)

"1. The administrative authority concerned is empowered to carry out investigations. Interviews, inspections of premises and coercive measures shall be entrusted to specially trained officials."

(Original)

"1. Für die Untersuchung ist die beteiligte Verwaltung zuständig. Mit der Durchführung von Einvernahmen, Augenscheinen und Zwangsmassnahmen sind besonders ausgebildete Beamte zu betrauen."

##### Section 21

(Translation)

"2. Any person who has been affected by a penal order issued by an administrative authority can apply for its judicial review."

(Original)

"2. Der von der Strafverfügung der Verwaltung Betroffene kann die Beurteilung durch das Gericht verlangen."

##### Section 26

(Translation)

"1. Coercive measures (Sections 45 et seq.) and official acts related thereto ... can be challenged by means of a complaint before the Accusations Chamber of the Federal Court."

(Original)

"1. Gegen Zwangsmassnahmen (Art. 45ff.) und damit zusammenhängende Amtshandlungen ... kann bei der Anklagekammer des Bundesgerichts Beschwerde geführt werden."

Section 28

(Translation)

"1. The complaint can be lodged by any person affected by the contested official act ... who has a legitimate interest in it being quashed or amended; ...

2. The complaint can allege violation of federal law, erroneous or incomplete establishment of the legally relevant facts or disproportionality; ..."

(Original)

"1. Zur Beschwerde ist berechtigt, wer durch die angefochtene Amtshandlung ... berührt ist und ein schutzwürdiges Interesse an der Aufhebung oder Änderung hat; ...

2. Mit der Beschwerde kann die Verletzung von Bundesrecht, die unrichtige oder unvollständige Feststellung des rechtserheblichen Sachverhalts oder die Unangemessenheit gerügt werden; ..."

Section 48

(Translation)

"1. Dwellings and other premises including adjoining enclosed pieces of land can only be searched when it is probable that the accused is hiding therein or that objects or valuables liable to seizure or traces of an offence can be found therein.

...

3. The search is carried out pursuant to a written order issued by the director or head of the administrative authority concerned or, if the investigation is within his or her competence, by the director of the customs district or the PTT district director."

(Original)

"1. Wohnungen und andere Räume sowie unmittelbar zu einem Haus gehörende umfriedete Liegenschaften dürfen nur durchsucht werden, wenn es wahrscheinlich ist, dass sich der Beschuldigte darin verborgen hält oder dass sich Gegenstände oder Vermögenswerte, die der Beschlagnahme unterliegen, oder Spuren der Widerhandlung darin befinden.

...

3. Die Durchsuchung erfolgt auf Grund eines schriftlichen Befehls des Direktors oder Chefs der beteiligten Verwaltung oder, soweit die Untersuchung zu einem Dienstbereich gehört, des Zollkreisdirektors oder des Kreisdirektors der PTT-Betriebe."

## Section 49

(Translation)

"1. At the beginning of the search the investigating official shall prove his or her identity.

2. The purpose of the search shall be communicated to the occupier. The latter shall be invited to attend the search if he or she is present. In case of his or her absence a relative or a person from the household shall be asked to attend the search. A public official designated by the competent cantonal authority or, if the investigating official acts on his own initiative, a member of the municipal authority or an official of the canton, district or municipality shall also be summoned to attend the search in order to ensure that it is in conformity with its aim. The search can be carried out in the absence of public officials, members of the household or relatives in cases where there is danger in delay or with the occupier's consent.

3. As a general rule, with the exception of important cases and cases of imminent danger, searches must not be carried out on Sundays, public holidays and at night.

4. A record of the search shall be drawn up immediately in the presence of those who attended it. Upon their request a copy of the search warrant and of the record shall be handed over to these persons."

(Original)

"1. Vor Beginn der Untersuchung hat sich der untersuchende Beamte auszuweisen."

2. Der anwesende Inhaber der Räume ist über den Grund ihrer Durchsuchung zu unterrichten und zu dieser beizuziehen; anstelle des abwesenden Inhabers ist ein Verwandter oder Hausgenosse beizuziehen. Im weitern ist die von der zuständigen kantonalen Behörde bezeichnete Amtsperson oder, falls der untersuchende Beamte von sich aus durchsucht, ein Mitglied der Gemeindebehörde oder ein Kantons-, Bezirks- oder Gemeindebeamter beizuziehen, der darüber wacht, dass sich die Massnahme nicht von ihrem Zweck entfernt. Ist Gefahr im Verzuge oder stimmt der Inhaber der Räume zu, so kann der Beizug von Amtspersonen, Hausgenossen oder Verwandten unterbleiben.

3. An Sonn- und allgemeinen Feiertagen und zur Nachtzeit darf im allgemeinen nur in wichtigen Fällen und bei dringender Gefahr eine Durchsuchung stattfinden.

4. Das Protokoll über die Durchsuchung wird im Beisein der Beteiligten sofort aufgenommen; auf Verlangen ist den Beteiligten ein Doppel des Durchsuchungsbefehls und des Protokolls auszuhändigen."

## Section 99

(Translation)

"1. An accused person, the proceedings against whom have been discontinued, ... shall be awarded, upon his or her request, damages for the detention on remand and for other prejudice he or she has suffered. However, the compensation or a part thereof

can be refused if, by culpable behaviour, he or she has brought about the investigation, or if he or she wilfully impeded or prolonged the proceedings."

(Original)

"1. Dem Beschuldigten, gegen den das Verfahren eingestellt ... wird, ist auf Begehren eine Entschädigung für die Untersuchungshaft und für andere Nachteile, die er erlitten hat, auszurichten; sie kann jedoch ganz oder teilweise verweigert werden, wenn er die Untersuchung schuldhaft verursacht oder das Verfahren mutwillig erschwert oder verlängert hat."

### III. OPINION OF THE COMMISSION

#### A. Complaints declared admissible

29. The Commission has declared admissible the applicant's complaints under Article 8 (Art. 8) of the Convention concerning the search of his house and under Article 13 (Art. 13) of the Convention concerning the absence of an effective remedy in this respect.

#### B. Points at issue

30. Accordingly, the issues to be determined are:

- whether there has been a violation of Article 8 (Art. 8) of the Convention;
- whether there has been a violation of Article 13 (Art. 13) of the Convention.

#### C. As regards Article 8 (Art. 8) of the Convention

31. Article 8 (Art. 8) of the Convention reads as follows:

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

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

- a. Whether there was an interference with the applicant's rights under Article 8 para. 1 (Art. 8-1)

32. The applicant submits that the search of his house interfered with his right to respect for his home. He contends that he has brought the application also at the request and on behalf of the tenant residing in his house. He considers that he is entitled to complain of the search of the whole house in his capacity as house-owner and landlord.

33. The Government submit that the applicant can be regarded as a "victim" of an interference with his rights under Article 8 (Art. 8) of the Convention only as regards the search of the single room which he actually uses.

34. The Commission finds that the search of the applicant's house amounted to an interference with his right to respect for his home guaranteed by Article 8 para. 1 (Art. 8-1) of the Convention. The Commission recalls that the European Court of Human Rights has applied a broad interpretation to the word "home" ("domicile" in French) appearing in Article 8 (Art. 8) of the Convention (cf., *mutatis mutandis*, Eur. Court H.R., Niemitz judgment of 16 December 1992, Series A no. 251-B, p. 34, paras. 30, 31). In the Commission's view, the applicant may well be entitled to claim to be a victim also in respect of those parts of his house which he does not actually occupy. The Commission is not required, however, to decide the matter, as it considers, for the reasons set out below, that the requirements of Article 8 para. 2 (Art. 8-2) were met in any event.

35. The Commission will accordingly examine whether this interference was justified under the terms of Article 8 para. 2 (Art. 8-2) of the Convention, i.e. whether it was "in accordance with the law", whether it pursued a legitimate aim within the meaning of para. 2, and whether it was "necessary in a democratic society" for that aim.

b. Whether the interference was in accordance with the law

36. The applicant claims that the search was unlawful as there was no adequate legal basis for it.

37. The Government submit that the search had a legal basis under Swiss law, namely Section 48 of the Administrative Criminal Law Act.

38. The Commission notes that the search was ordered and carried out in accordance with the relevant provisions of Sections 48 et seq. of the Administrative Criminal Law Act. It therefore had a legal basis and the Commission sees no reason why this basis should not be considered as being accessible, foreseeable and in accordance with the rule of law (cf. Eur. Court H.R., *Kruslin* judgment of 24 April 1990, Series A no. 176-A, p. 20, paras. 27 et seq.).

c. Whether the interference pursued a legitimate aim

39. The applicant contends that the search of his house did not pursue any legitimate aim.

40. The Government submit that the search of the applicant's house was carried out in order to prevent crime which is a legitimate aim under Article 8 para. 2 (Art. 8-2) of the Convention.

41. The Commission recalls that the search was ordered and carried out in the context of administrative criminal proceedings concerning a contravention within the meaning of Section 42 of the Telegraph and Telephone Communications Act. The aim of the search was to find and seize an unauthorised cordless telephone by means of which the applicant was suspected to have committed this contravention. The telephone operated on a wave-band reserved for civil and military aviation. The Commission therefore finds that the search pursued the legitimate aims of preventing disorder and crime and protecting the rights of others.

d. Whether the interference was necessary

42. According to the applicant the fact that he once tested an unauthorised cordless telephone could not justify the interference with his right to respect for his home. In his view the search was disproportionate as it lasted almost two hours and comprised every single area of his house. He maintains that administrative authorities

in Switzerland are neither entitled nor qualified to carry out criminal investigations, even in cases of minor offences.

43. The Government contend that the Administrative Criminal Law Act provides satisfactory safeguards against abuse as regards house searches. In particular, they recall that searches can only be ordered when it is probable that, *inter alia*, objects liable to seizure or traces of an offence can be found there, and that the search order must be issued in writing by a high-ranking official. Moreover, searches can only be carried out by officials who have been specially trained for that purpose, the occupier has to be invited to attend the search if he or she is present and a public official is also to be summoned to ensure that the search is in conformity with its aim.

44. The Government submit that given the aforesaid guarantees as well as the particular circumstances in which the search of the applicant's house was carried out, the interference complained of was not disproportionate to the legitimate aim pursued.

45. The Commission recalls that the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. The Commission has to take into account that a margin of appreciation is left to the Contracting States. That does not mean, however, that the Commission's review is limited to ascertaining whether the respondent State has exercised its discretion reasonably, carefully and in good faith. The Commission must determine whether the reasons adduced to justify the interference are relevant and sufficient (*cf.*, *mutatis mutandis*, Eur. Court H.R., Olsson judgment of 24 March 1988, Series A no. 130, pp. 31-32, paras. 67-68).

46. As regards house searches in particular, the relevant legislation and practice must afford adequate and effective safeguards against abuse (*cf.*, *e.g.*, Eur. Court H.R., Funke judgment of 25 February 1993, Series A no. 256-A, pp. 24-25, para. 56).

47. The Commission notes that in the aforesaid case, which concerned a house search and seizure of several items, the Court found that, in the absence of any requirement of a judicial warrant, the restrictions and conditions provided for by law (which included decision-making by the head of the customs district concerned, the rank of the officers authorised to establish offences, the presence of a senior police officer, the timing of searches and the possibility of invoking the liability of the public authorities) were too lax and full of loopholes for the interferences with the applicant's rights to have been strictly proportionate to the legitimate aim pursued notwithstanding that they were strengthened by judicial supervision (*cf.* the Funke judgment previously cited, Series A no. 256-A, p. 25, para. 57).

48. In the case of Funke the Court did not make an express finding that every search carried out by administrative authorities must be accompanied by a judicial warrant, and the Convention organs must determine, in the particular circumstances of each case, whether the interference complained of was proportionate to the legitimate aim pursued.

49. The Commission must thus determine whether there were relevant and sufficient reasons for the interference with the applicant's right to respect for his home and whether this interference was, in the particular circumstances of the case, proportionate to the legitimate aim pursued.

50. The administrative authorities considered it essential to search the applicant's house in order to obtain evidence of a contravention

of which the applicant was suspected. The Commission finds that, having regard to their margin of appreciation, the Swiss authorities were entitled to think that the search was necessary for the prevention of crime. In the Commission's view, the reasons adduced to justify the search, namely the finding and seizure of the unauthorised cordless telephone which operated on a wave-band reserved for civil and military aviation, are relevant and sufficient.

51. The Commission recalls that the search was ordered by the head of the PTT telecommunications administration in Berne. Originally, it was to be carried out by two PTT officials and an officer of the cantonal police was also summoned to attend it. However, at the applicant's request the search was carried out by a single PTT official in the applicant's presence.

52. The search lasted nearly two hours and although it comprised the whole house, it was restricted to checking whether the telephones and TV sets in the house complied with the PTT standards. The investigating official did not touch any objects, open any drawers or consult any documents. Unlike in the case of Funke, no documents or objects were seized. At the end of the search a record was drawn up.

53. The Commission notes that the relevant provisions of the Administrative Criminal Law Act provide for a certain number of guarantees against arbitrary treatment in cases of house searches. Thus, searches are to be ordered in writing by a senior official and they may only be carried out by officials who have been specially trained for that purpose. A search may only be ordered when it is probable that an accused person is hiding in the place to be searched or that objects or valuables liable to seizure or traces of an offence can be found therein.

54. Further, the investigating official has to justify that he or she is authorised to carry out the search and communicate its purpose to the occupier of the premises to be searched. The occupier or a person from his or her household shall be invited to attend the search, and a local public official shall also be summoned to ensure that the search is in conformity with its aim. A record is to be drawn up immediately after the search in the presence of those who attended it, and a copy thereof shall be handed over, upon their request, to these persons. Finally, Swiss law provides for restrictions as regards the timing of searches.

55. The Commission finds, having regard to the limited extent of the search and to the safeguards provided for by Swiss law, that even in the absence of a requirement of a judicial warrant the interference with the applicant's rights was strictly proportionate to the legitimate aim pursued.

56. Taking these different aspects of the present case into account, the Commission finds that the interference with the applicant's right to respect for his home can reasonably be regarded as "necessary in a democratic society" within the meaning of Article 8 para. 2 (Art. 8-2).

#### CONCLUSION

57. The Commission concludes, unanimously, that in the present case there has been no violation of Article 8 (Art. 8) of the Convention.

D. As regards Article 13 (Art. 13) of the Convention

58. Article 13 (Art. 13) of the Convention reads as follows:

"Everyone whose rights and freedoms as set forth in this

Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

59. The applicant considers that his claim is arguable since the search infringed his rights and had negative consequences for him. This fact is denied by the Government.

60. The Commission recalls that the right to an effective remedy before a national authority guaranteed by Article 13 (Art. 13) may only be exercised in respect of an arguable claim (cf. Eur. Court H.R., Powell and Rayner judgment of 21 February 1990, Series A no. 172, pp. 14 and 15, paras. 31 and 33), that is one concerning a right or freedom guaranteed by the Convention, not wholly unsubstantiated on the facts, and giving rise to a prima facie issue under the Convention (cf., *mutatis mutandis*, No. 10746/84, Dec. 16.10.86, D.R. 49 pp. 126, 142 and 143, with further references).

61. On 27 November 1995 the Commission found, *inter alia*, that the applicant's complaint under Article 8 (Art. 8) of the Convention raises serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. The Commission considers that the applicant's claim in this respect is arguable within the meaning of the Convention organs' case-law. It is therefore necessary to establish whether the applicant had at his disposal a remedy satisfying the requirements of Article 13 (Art. 13).

62. The applicant submits that his right to an effective remedy was violated since the Federal Court ignored the facts of his case and decided arbitrarily.

63. The Government contend that when administrative criminal proceedings have been discontinued, Section 99 para. 1 of the Administrative Criminal Law Act provides for the possibility of applying for damages for detention on remand or other prejudice caused by the proceedings. In such a case the court would inevitably have to make a finding - albeit subsidiarily - as to the merits of the coercive measure. They add that a person found guilty of an offence by an administrative authority can subsequently have his or her case reviewed by a court pursuant to Section 21 para. 2 of the Administrative Criminal Law Act. The Government therefore consider that the applicant was not deprived of an effective remedy before a national authority.

64. The Commission recalls that the remedy provided for in Article 13 (Art. 13) requires an examination by the domestic authorities of the lawfulness and the substantive justification of the matter complained of (cf. No. 19066/91, Dec. 5.4.93, D.R. 74 pp. 179, 189, with further references).

65. In the present case, the Federal Court found that after the search was over, it no longer infringed the applicant's rights. For this reason it did not consider it necessary to examine the substance of the applicant's complaint about unlawfulness of the search. The Commission finds that in these circumstances the complaint which the applicant was entitled to and did lodge pursuant to Section 26 para. 1 of the Administrative Criminal Law Act cannot be regarded as effective within the meaning of Article 13 (Art. 13).

66. It is true that after the administrative criminal proceedings had been discontinued, it was open to the applicant to claim damages pursuant to Section 99 para. 1 of the Administrative Criminal Law Act.

67. However, the purpose of such a procedure would be to establish whether the applicant meets the prerequisite conditions for award of

damages, i.e. whether he suffered a prejudice as a result of the acts relating to the administrative criminal proceedings, and whether or not their introduction or any obstructions and delays in these proceedings were imputable to his culpable behaviour.

68. The Government do not suggest that a court dealing with a claim for damages pursuant to Section 99 para. 1 of the Administrative Criminal Law Act would have been able to look behind the Federal Court's judgment of 27 March 1992. The Commission has not been supplied with any information which could lead to the conclusion that such a claim would in fact give rise to a substantive examination of the applicant's complaint about the alleged unlawfulness of the search of his house.

69. In the light of the foregoing, the Commission finds that a claim for damages pursuant to Section 99 para. 1 of the Administrative Criminal Law Act cannot be considered as an effective remedy within the meaning of Article 13, (Art. 13) and that as a result of the Federal Court's refusal to examine his complaint about the search, the applicant did not have at his disposal any effective remedy as regards the interference with his right to respect for his home.

#### CONCLUSION

70. The Commission concludes, unanimously, that in the present case there has been a violation of Article 13 (Art. 13) of the Convention.

#### E. Recapitulation

71. The Commission concludes, unanimously, that in the present case there has been no violation of Article 8 (Art. 8) of the Convention (see above, para. 56).

72. The Commission concludes, unanimously, that in the present case there has been a violation of Article 13 (Art. 13) of the Convention (see above, para. 69).

H.C. KRÜGER  
Secretary  
to the Commission

G.H. THUNE  
Acting President  
of the Commission