CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

COURT (CHAMBER)

CASE OF QUARANTA v. SWITZERLAND

(Application no. 12744/87)

JUDGMENT

STRASBOURG

24 May 1991

In the Quaranta case[*],

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")[**] and the relevant provisions of the Rules of Court[***], as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mrs D. BINDSCHEDLER-ROBERT,
Mr F. MATSCHER,
Mr L.-E. PETTITI,
Mr C. RUSSO,
Mr R. BERNHARDT,
Mrs E. PALM,
Mr A.N. LOIZOU,
Mr J.M. MORENILLA,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 25 January and 23 April 1991,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 6 April 1990 and then by the Government of the Swiss Confederation ("the Government") on 27 June 1990, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12744/87) against Switzerland lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Claudio Quaranta, on 18 December 1986. In the proceedings before the Commission the applicant was identified by the initial "Q."; however, he subsequently agreed to the disclosure of his identity.

---

[*] The case is numbered 23/1990/214/276. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

[**] As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

[***] The amendments to the Rules of Court which came into force on 1 April 1989 are applicable to this case.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Switzerland recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Articles 45, 47 and 48 (art. 45, art. 47, art. 48). The object of the request and of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 3 (c) (art. 6-3-c).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30). The Italian Government, having been informed by the Registrar of their right to intervene in the proceedings (Article 48 (b) of the Convention and Rule 33 para. 3 (b)) (art. 48-b), did not indicate any intention of so doing.

3. The Chamber to be constituted included ex officio Mrs D. Bindschedler-Robert, the elected judge of Swiss nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 26 April 1990, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mr. C. Russo, Mr R. Bernhardt, Mr N. Valticos, Mrs E. Palm, Mr A.N. Loizou and Mr J.M. Morenilla (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Mr L.-E. Pettiti, substitute judge, replaced Mr Valticos, who was prevented from taking part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Government, the Delegate of the Commission and the applicant's representative on the need for a written procedure (Rule 37 para. 1). In accordance with the order made in consequence, the Registrar received the applicant's memorial on 16 August 1990 and that of the Government on 16 October. On 2 January 1991 the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 6 July 1990 that the oral proceedings should open on 21 January 1991 (Rule 38).

On 21 November 1990 the Commission and the applicant lodged various documents.

6. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr P. BOILLAT, Head
of the European Law and International Affairs Section,
Federal Office of Justice, *Agent*,

Mr C. VAUTIER, a former Vaud cantonal judge,
Mr F. SCHÜRMANN, a member
of the European Law and International Affairs Section,
Federal Office of Justice, *Counsel*;
- for the Commission
Mr F. MARTINEZ, *Delegate*;
- for the applicant
Mr J. LOB, avocat, *Counsel*.

The Court heard addresses by Mr Boillat and Mr Vautier for the Government, by Mr Martinez for the Commission and by Mr Lob for the applicant, as well as their replies to its questions.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

7. Mr Quaranta, who is an Italian national, was born in 1962 at Scorrano (Lecce). He arrived in Switzerland at a very young age, with his parents. He resides at Vevey in the Canton of Vaud, where he pursues the occupation of assistant plumber.

8. Between 1975 and 1978 he was placed in various homes for juveniles. In December 1978 he was made the subject of an educational assistance order by decision of the President of the Lausanne Juvenile Court. On his return to his parents' home, he began, in August 1979, a plumber's apprenticeship but failed to complete it. He subsequently worked for a number of local companies.

On 5 March 1982 the Vevey District Criminal Court gave him a suspended sentence of ten months' imprisonment, with three years probation, for aggravated theft, robbery, criminal damage and taking and driving away a motor vehicle without a driving licence. The court decided to treat him on the same footing as his accomplice and accepted his plea of diminished responsibility (Article 11 of the Swiss Penal Code), but without ordering an expert psychiatric opinion; it also took into consideration his youth, the short duration of his criminal activity, his personal situation at the time of the offences, particularly as regards his emotional insecurity, and the lasting improvement observed in his behaviour. This decision is not here in issue.

A. The proceedings before the Vevey District Criminal Court

9. The applicant, who was suspected of an offence under the Federal Misuse of Drugs Act of 3 October 1951 ("the 1951 Act"), appeared on 10 March 1985 before the investigating judge ("juge informateur") of the Vevey-Lavaux district. In the course of this sole examination, he requested free legal assistance (Article 104 of the Vaud Code of Criminal Procedure - see paragraph 18 below).

On 23 May 1985 the investigating judge communicated the application to the President of the Criminal Court who rejected it (Article 107 of the Vaud Code of Criminal Procedure - see paragraph 18 below) on 31 May on the grounds that "the needs of the defence [did] not require ... the provision of free legal assistance" and that "the case [did] not give rise to particular difficulties". Mr Quaranta was informed of this decision on 3 June and, although advised of his right to appeal against it within ten days to the indictments tribunal, he did not do so.

On 5 June 1985 he went to the Criminal Court to reiterate his request. By a letter of 7 June the registrar informed him that he could not lodge such a request until his file had reached the court.

10. On 23 August 1985 the investigating judge committed the applicant for trial in the Vevey Criminal Court, charged with offences under Articles 19 para. 1, 3rd, 4th and 5th indents, and 19 (a) para. 1 of the 1951 Act (see paragraph 19 below).

11. On 17 October 1985 the applicant repeated his request for free legal assistance, but on 30 October the President of the Criminal Court refused it for the same reasons as on 31 May (see paragraph 9 above).

12. The hearing began on 12 November 1985 at 2.30 p.m.; it lasted only twenty-five minutes. The applicant appeared in person without the assistance of a lawyer. No representative of the public prosecutor’s office participated in the court proceedings. The main documents in the file were read out, including the committal order. Mr Quaranta answered the President’s questions and added a few words in his defence.

The same day, after having deliberated, the court found the applicant guilty of taking drugs and drug trafficking and on this account sentenced him to six months’ imprisonment; the sentence was not suspended. In addition, having stressed the relative seriousness of the offences, committed while on probation under the 1982 decision, it revoked the suspension order (Article 41 para. 3 of the Swiss Criminal Code) and ordered the activation of the previous sentence (see paragraph 8 above), from which the five days that the accused had spent in detention on remand were to be deducted.

In the grounds of the judgment the court noted that the applicant had taken hashish daily since 1975 and that from the summer of 1983 to spring 1985 he had bought, in small quantities, 2 kg of this drug, most of which he had sold. It considered that a heavy penalty was called for because of the

large quantity of hashish involved and the applicant's profit-making intention. However, in mitigation, it took into account his "very precarious" financial position during the period in question; he was unemployed and he lived, together with his family, on social security benefit.

B. The proceedings in the Criminal Court of Cassation of the Vaud Cantonal Court

13. Through a lawyer, whose services he paid for himself, Mr Quaranta appealed to the Court of Criminal Cassation of the Vaud Cantonal Court.

He pleaded primarily that the court should quash the judgment of 12 November 1985. In his view, his youth, his lack of vocational training and his two previous convictions (see paragraph 8 above) had made the presence of a lawyer necessary for his defence. Furthermore, the contested decision was, he claimed, flawed by reason of the criminal court's failure to state why it had considered that the subjective conditions for suspending the sentence were not satisfied.

In the alternative the applicant asked the Court of Cassation to vary the decision. He argued that the trial court had misapplied Article 41 of the Swiss Criminal Code inasmuch as, on account of his age and the improvement observed in his behaviour, he should have been left a last chance and been given a further suspended sentence.

14. On 27 January 1986 the Criminal Court of Cassation dismissed the appeal on the following grounds:

> "Application to have the decision quashed (recours en nullité)
>
> ...
>
> In a judgment, Coindet, of 11 November 1983 ... the First Public-Law Chamber of the Federal Court laid down the following principles:
>
> The conditions set forth in Article 104 para. 2 CCP [Code of Criminal Procedure] - the needs of the defence in a criminal prosecution - are the same as those laid down in the case-law concerning the right to free legal assistance as it may be inferred from Article 4 of the Constitution. The accused must be provided with defence counsel where the sentence which he may expect on conviction cannot be suspended because of its length, or where there is a likelihood of an order confining him to a non-penal institution [mesure privative de liberté]; in other cases such a right may be recognised under Article 4 of the Constitution only where, in addition to the relative seriousness of the case, there are special difficulties from the point of view of the establishment of the facts or the legal issues raised; it is then necessary to take account of the accused's capacities, his experience in the legal field and the measures which appear necessary, in the specific case, to provide for his defence, in particular as regards the evidence which he will have to produce.
>
> ...

In this instance, the length of the term of imprisonment did not in itself rule out the possibility of a suspended sentence. Moreover, the appellant does not claim that free legal assistance was necessary because he expected to receive a sentence which could not be suspended by reason of its length; there was no difficulty in the establishment of the facts, which, as the appellant states in his memorial, 'are admitted in their large majority'; nor does the appellant rely on legal difficulties, and he is correct in not doing so; as regards the reasons relating to the accused's personal situation, the fact that he is a young adult within the meaning of Articles 100-100 ter of the Criminal Code, and has already been convicted, cannot be regarded as constituting a particular difficulty.

The submission is therefore unfounded and must fail.

...

In so far as the appellant seeks to show that the decision was flawed with regard to points of fact which constituted the basis of the reasoning of the first-instance court in its refusal to suspend the sentence, it may be accepted that this submission raises a question of nullity. But it is unfounded. In fact, in order to establish whether the subjective conditions for suspending a sentence are satisfied, the trial judge must determine whether there are prospects for the defendant's lasting improvement, having regard to his past history and his character (Arrêts du Tribunal fédéral, [ATF, official reports of the judgments of the Swiss Federal Court] 101 IV 258, ground 1; Federal Court: Meyer, 29.11.1983, ad Cass. : 7.10.1983). In this instance the trial court noted the appellant's past history and found that he took and trafficked in drugs. As regards his character, it described his curriculum vitae, his family situation, his reputation and his financial position. The trial court therefore gathered together all the necessary information to make a prognosis. Consequently, the complaint that the decision was flawed in this respect is unfounded and the application to have the decision quashed must fail.

...

3. Application to have the decision varied (recours en réforme)

...

According to the Federal Court, to determine whether the past history and character of the accused and the circumstances of the case make it possible to foresee an improvement in his behaviour is essentially a matter of assessment and the appellate authority can intervene in this area only if the trial court based its decision on questionable legal argument or exceeded its power of assessment (Journal des Tribunaux [JT, Courts' Gazette] 1980 I 460 no. 58, and the judgments mentioned therein). The same principles have been laid down by this Court: the appellate body should intervene only where the trial court misuses its power of assessment or where it has failed to give expressly or impliedly the grounds for its decision (see CCP with annotations, Article 415, p. 285).

In this instance, the grounds for refusing to suspend the sentence were stated by implication and did not constitute misuse of the power of assessment. The quantity of drugs involved was large and the appellant's criminal activity continued over a long period, while he was on probation under another sentence. The profit-making purpose is clear. Not even his precarious financial position excuses engaging in such traffic.

The information obtained regarding the appellant is not wholly positive. The first-instance court was therefore correct in taking the view that his past history and his character and the circumstances of the case were not such as to warrant a favourable prognosis and therefore in refusing to suspend the sentence. The refusal to suspend the sentence is therefore justified and the application to have the decision varied must therefore also fail."

C. Proceedings in the Federal Court

15. The applicant then lodged a public-law appeal with the Federal Court, complaining of the arbitrary application of Article 104 of the Vaud Code of Criminal Procedure and of violations of Article 4 of the Constitution and Article 6 para. 3 (c) (art. 6-3-c) of the Convention. He also sought free legal assistance in the proceedings before the Federal Court.

On 5 December 1986 the Federal Court allowed his request for free legal assistance, but dismissed the appeal in the following terms:

"1. The appellant states that the submissions on which he relies ... overlap for the most part and he gives no specific grounds, as required under Article 90 para. 1 (b) OJ [Federal Act on the organisation of the courts of 16 December 1943], concerning the complaint of a violation of the European Convention on Human Rights. Moreover, the guarantees secured by the provisions of Article 6 (art. 6) of the European Convention are in part already contained in Article 4 of the Constitution. They do not therefore in this case have separate effect (ATF 105 Ia 305, ground f, 103 Ia 5, ground 2). The present appeal can consequently be examined only from the point of view of domestic law.

...

... In other words provision of free legal assistance is indispensable where the case in question is of some gravity and gives rise to difficulties as to the facts or to the law of a kind that the accused is not in a position to deal with (ATF 111 Ia 82 s., ground 2 c, 102 Ia 89 et seq.). In order to ascertain whether the minimum requirements of Article 4 of the Constitution are satisfied, it is necessary in each case to assess all the specific circumstances (ATF 102 Ia 90).

4. (a) As far as the length of the likely sentence is concerned (an order of confinement in a non-penal institution not being relevant to the present case), the appellant does not claim that he risked, in the given circumstances and for the only offences of which he was accused, a sentence whose length was in excess of a sentence which might be suspended. Clearly the risk of the activation of the previous suspended sentence (which was here for a term of ten months' imprisonment) has to be taken into account (see the Coindet judgment, cited above, ground 2 b). But the appellant does not maintain that, in view of this possibility, he in fact risked a custodial sentence of more than eighteen months. On the contrary, he relied on the total of sixteen months' imprisonment imposed on him in order to argue that free legal assistance might have made it possible for him to obtain a more lenient sentence. It must therefore be recognised that the overall sentence which he actually risked did not exceed eighteen months and therefore did not entail the obligation to grant him free legal assistance.

(b) Evidently, the appellant's case must be regarded in itself as relatively serious, for the reasons set out in the judgments of the Cantonal Court and the Criminal Court. However, various considerations which the case-law has identified as militating in favour of according free legal assistance did not apply: Quaranta was not in detention on remand for a long time, which would have been an impediment to his defence; he was released on the very day on which he had been arrested (ATF 101 Ia 91, ground 3 e, 100 Ia 187/188); the prosecution case was not argued, at the trial hearing on 12 November 1985, by a representative of the public prosecutor's office (ATF 106 Ia 183, ground 2 b, 103 Ia 5 i. f.); despite a certain instability, the appellant did not appear to be a man of diminished capacity either physically or mentally, as can be inferred from the attestation and the statements of his employer, as well as those of the social worker questioned by the police. In addition, his case did not give rise to any difficulty as to the facts, since the investigation concerning him consisted merely of a single interview by the investigating judge. Moreover, he immediately admitted the facts in respect of which he was accused, and which are not in any case contested in the appeal (ATF 111 Ia 85/86, 101 Ia 92).

...

(aa) As regards the possibility of diminished criminal responsibility, the appellant relies, in the first place, on the extract from the contested judgment in which it is stated that 'from 1975 until spring 1985, and with greater frequency since 1983, the accused has taken hashish on a daily basis', an extract reproduced verbatim from the first-instance judgment of 12 November 1985. Secondly, he relies on the Conconi judgment (ATF 102 IV 74 et seq.). It appears, however, from the file of the investigating judge of the Vevey-Lavaux district that the above-mentioned statement of fact is not accurate. Questioned on 10 March 1985 by the police, the appellant stated: 'I have been smoking hash for about ten years. For two years I have smoked every day'. The same day, he answered the investigating judge as follows: 'I first came into contact with hashish at the age of thirteen ... . Since then I have smoked it from time to time; it is really only over the last two years that I have been smoking hashish almost daily'. The police report of 10 April 1985 notes that Quaranta 'stated that he had been smoking hashish for about ten years and more regularly for two years'. There is no evidence to the effect that, contrary to his statements, the appellant smoked hashish on a daily basis 'from 1975 onwards', or indeed that he has in fact smoked every day since 1983. Moreover, the same evidence makes clear that he only used hashish, and not 'hard' drugs. In any event the committal order and the criminal court's judgment of 12 November 1985 concerned solely hashish.

On issues of law it was unnecessary to appoint a lawyer to act for the appellant in order to draw the Court's attention to the fact that, in accordance with the Conconi judgment, 'the court has a duty, where consumption of narcotics is involved, to consider whether the circumstances cast doubt on the accused's responsibility'. Quaranta appeared in no way disturbed and, unlike Conconi, he had never used 'hard' drugs. The cantonal courts, which inquired into the accused's character and expressed their views in this respect, therefore clearly considered that there were no grounds for doubting his mental state. Whether or not they were under an obligation to say so expressly in their judgments, as would seem to be a possible inference from the Conconi judgment, is immaterial in relation to an alleged obligation to accord free legal assistance.

(bb) The question whether the reason for the refusal to suspend the new sentence also necessarily entailed the activation of the previous suspended sentence (cf. ATF

107 IV 92/93) was not in itself a complex legal issue which required the granting of free legal assistance. Given the appellant's previous history and the nature and the dates of the new offences, there is no evidence that the provision of legal assistance - which Quaranta moreover received for his appeal to the Criminal Court of Cassation - would have been necessary for the protection of his rights.

... ."

16. On 21 July 1987 Mr Quaranta went to the prison of Bellechasse (Fribourg) to serve his sentence, but the High Council of the Canton of Vaud accorded him a partial pardon by a decree of 18 November 1987 which was worded as follows:

"The enforcement of the sentences of ten months' imprisonment, less five days of detention on remand, and six months' imprisonment to which Quaranta was sentenced by the Vevey District Criminal Court respectively on 5 March 1982 and 12 November 1985 shall be suspended as from 24 December 1987 for a probationary period of three years from the date of suspension."

II. RELEVANT DOMESTIC LAW

A. The Federal Constitution

17. According to the first paragraph of Article 4 of the Federal Constitution,

"All Swiss nationals shall be equal before the law. In Switzerland there shall be no vassals; and there shall be no privileges attaching to a place, birth, persons or families."

B. Free legal assistance

18. The two provisions of the Vaud Code of Criminal Procedure relied on or applied in the present case are as follows:

Article 104

"The accused must be provided with defence counsel in all cases in which a representative of the public prosecutor's office participates in the court proceedings.

In other cases, he may be provided with defence counsel, even against his will, when the needs of the defence so require, in particular for reasons relating to his personality or because of the particular difficulties of the case."

Article 107

"At any time until the opening of the trial, the accused may request free legal assistance. He shall make such a request to the investigating judge, who shall transmit

it forthwith, with his preliminary opinion, to the President of the competent court; when the case has already been referred to the court, the accused shall submit his request directly to the President.

The President shall take his decision promptly; ... ."

C. The anti-drugs legislation

1. The Federal Misuse of Drugs Act of 3 October 1951

19. Sections 19 para. 1 and 19 (a) para. 1 provide inter alia:

Section 19 para. 1

"Any person who unlawfully cultivates alkaloid or hemp plants with a view to producing narcotics,

any person who unlawfully manufactures, extracts, transforms or prepares narcotics,

any person who unlawfully stocks, dispatches, transports, imports, exports or carries them in transit,

any person who unlawfully offers, distributes, sells, deals in, procures, prescribes, markets or transfers them,

any person who unlawfully possesses, holds, purchases or otherwise acquires them,

any person who takes steps to pursue these ends,

any person who finances illegal traffic in narcotics or who serves as intermediary for such financing, and

any person who publicly encourages the consumption of drugs or reveals how to obtain or consume them,

shall be liable, if he has acted intentionally, to imprisonment or a fine. In serious cases the sentence may be imprisonment (réclusion or emprisonnement) for at least one year; such a sentence may be accompanied by the imposition of a fine of up to one million Swiss francs.

... ."

Section 19 (a) para. 1

"Any person who unlawfully and intentionally consumes narcotics or any person committing an infringement of Article 19 in order to provide for his own consumption shall be liable to detention or a fine.

... ."

2. The Swiss Criminal Code

20. The term of imprisonment (emprisonnement) is laid down in Article 36 of the Criminal Code:

> "The term of imprisonment (emprisonnement) shall be not less than three days and, except as expressly provided to the contrary by statute, shall not exceed three years."

21. The rules governing the suspension of sentence are set out in Article 41, which is worded as follows:

> "1. Where a custodial sentence of not more than eighteen months or an accessory penalty is imposed, the court may suspend the enforcement of the sentence, if the record and character of the convicted person suggest that this measure will deter him from committing further offences and if he has made reparations, to the extent which might reasonably be expected of him, for damage as assessed by the court or by agreement with the injured party.
>
> The sentence may not be suspended where the convicted person has undergone, in respect of an intentional offence (crime or délit), more than three months' imprisonment (réclusion or emprisonnement) within the five years preceding the commission of the offence. Foreign convictions are to be taken into account in so far as they are not contrary to Swiss public policy.
>
> In suspending the sentence, the court shall accord the convicted person a probationary period of from two to five years.
>
> Where more than one sentence is involved, the judge may limit the effect of the suspension to certain of them.
>
> ... ."

22. In the case of abnormal offenders, alcoholics and drug addicts, the court may order the following measures and treatment:

Article 43 para. 1

> "Where the mental state of an offender who has committed, by reason of this state, an offence punishable by imprisonment (réclusion or emprisonnement) under the present Code requires medical treatment or special care intended to remove or reduce the danger of the offender's committing other such offences, the court may order that he be sent to a hospital or an asylum. It may order out-patient treatment if the offender does not represent a danger for other persons."
>
> ...
>
> Where out-patient treatment is ordered, the court may suspend the sentence imposed if that sentence is not compatible with the treatment. In such circumstances, it may order the convicted person to comply with rules of conduct under Article 41 (2) and, if necessary, place him under court supervision.
>
> ... ."

Article 44

"1. If the offender is an alcoholic and he has committed the offence in question by reason of this state, the court may commit him to an establishment for alcoholics or if necessary to a hospital in order to prevent new offences. The court may also order out-patient treatment. Article 43 (2) is applicable by analogy.

The court shall order if necessary an expert opinion on the physical and mental state of the offender and on the appropriateness of the treatment.

...

6. This Article applies by analogy to drug addicts.

... ."

PROCEEDINGS BEFORE THE COMMISSION

23. In his application (no. 12744/87) lodged with the Commission on 18 December 1986, Mr Quaranta claimed to be the victim of a violation of Article 6 para. 3 (c) (art. 6-3-c) of the Convention. He maintained that he had not had the means to pay a lawyer of his choice and that, in view of the nature of the case, a lawyer should have been appointed to represent him during the investigation and subsequently at the hearing before the Vevey Criminal Court.

24. The Commission found the application admissible on 6 July 1988. In its report of 12 February 1990 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 para. 3 (c) (art. 6-3-c). The full text of its opinion is reproduced as an annex to this judgment[*].

FINAL SUBMISSIONS SUBMITTED TO THE COURT BY THE GOVERNMERNT

25. At the hearing the Government confirmed the submissions set out in their memorial, in which they requested the Court to hold that "Switzerland has not infringed the European Convention on Human Rights in respect of the facts which gave rise to the application lodged by Mr Quaranta".

---

[*] Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 205 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 para. 3 (c) (art. 6-3-c)

26. The applicant complained that the President of the Vevey District Criminal Court had twice refused his application for free legal assistance in the proceedings before that court. He relied on Article 6 para. 3 (c) (art. 6-3-c) of the Convention, which is worded as follows:

> "3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> ... . "

27. The Court points out that the right of an accused to be given, in certain circumstances, free legal assistance constitutes one aspect of the notion of a fair trial in criminal proceedings (see the Artico judgment of 13 May 1980, Series A no. 37, p. 15, para. 32). Sub-paragraph (c) of Article 6 para. 3 (art. 6-3-c) attaches two conditions to this right. The first, lack of "sufficient means to pay for legal assistance", is not in dispute in the present case. On the other hand, it is necessary to determine whether the "interests of justice" required that the applicant be granted such assistance.

28. The Commission observed that even if the refusal of the President of the Criminal Court, during the investigation (see paragraph 9 above) and then prior to the hearing (see paragraph 11 above), was in conformity with Swiss law and practice, it did not necessarily follow that the criteria applied by the national authorities were decisive for the purposes of the Convention; it considered that in the present case the "interests of justice" required that the applicant be accorded free legal assistance both during the investigation and before the Vevey District Criminal Court.

29. The Government disputed that view. In their contention Article 6 para. 3 (c) (art. 6-3-c) does not provide a higher level of protection than the guarantees which the Federal Court has inferred from Article 4 of the Federal Constitution. They argued that the right to free legal assistance was not absolute, but depended on the assessment of all the circumstances of the case and was subject to a number of conditions which were substantially the same in federal law and in the law of the various cantons. The Vaud legislation provided for the right to free legal assistance in criminal proceedings and made the grant of such assistance subject to certain conditions; Article 104, 2nd paragraph, of the Vaud Code of Criminal

Procedure recognised such a right, inter alia, "when the needs of the defence so require" (see paragraph 18 above). The Government stressed that sub-paragraph (c) of Article 6 para. 3 (art. 6-3-c) of the Convention was drafted in similar terms. They considered nevertheless that the Court had had few opportunities to define the notion of "interests of justice" and that its case-law in this field lacked clarity. Should the Court confirm the Commission's opinion, the Government invited it to specify expressly in what way the judicial authorities had infringed Article 6 para. 3 (c) (art. 6-3-c).

30. On several occasions the Court has observed that the Contracting States enjoy considerable freedom in the choice of the means of ensuring that their legal system satisfies the requirements of Article 6 (art. 6). Its task is to determine whether the method chosen by them in this connection leads to results which, in the cases which come before it, are consistent with the requirements of the Convention.

31. As the Government emphasised, in rejecting Mr Quaranta's application the cantonal and federal authorities relied on specific considerations such as the fact that there were no special difficulties arising from the case, the fact that no representative of the prosecuting authority attended the first-instance hearing, the applicant's character, the shortness of his detention on remand and the penalty which he risked incurring.

32. In order to determine whether the "interests of justice" required that the applicant receive free legal assistance, the Court will have regard to various criteria. To a large extent they correspond to those put forward by the Government. However, the way in which the Swiss authorities appear to apply them may differ - and in the present case did differ - from the Court's approach.

33. In the first place, consideration should be given to the seriousness of the offence of which Mr Quaranta was accused and the severity of the sentence which he risked. He was accused of use of and traffic in narcotics and was liable to "imprisonment or a fine" (section 19 para. 1 of the 1951 Act - see paragraph 19 above).

According to the Government, there was nothing in the file to indicate that the Criminal Court was likely to impose a sentence exceeding eighteen months, the maximum for a suspended sentence. By sentencing the applicant to six months' imprisonment, the court did not reach this limit, even if the sentence imposed in 1982 is taken into account (see paragraph 8 above).

The Court notes however that this was no more than an estimation; the imposition of a more severe sentence was not a legal impossibility. Under section 19 para. 1 of the Federal Misuse of Drugs Act, in conjunction with Article 36 of the Swiss Criminal Code, the maximum sentence was three years' imprisonment (see paragraph 20 above). In the present case, free legal assistance should have been afforded by reason of the mere fact that so much was at stake.

34. An additional factor is the complexity of the case. The Court agrees with the Government that the case did not raise special difficulties as regards the establishment of the facts, which the applicant had moreover admitted immediately at his only examination by the investigating judge. However, the outcome of the trial was of considerable importance for the applicant since the alleged offence had occurred during the probationary period to which he was made subject in 1982 (see paragraph 8 above). The Criminal Court therefore had both to rule on the possibility of activating the suspended sentence and to decide on a new sentence. The participation of a lawyer at the trial would have created the best conditions for the accused's defence, in particular in view of the fact that a wide range of measures was available to the Court.

35. Such questions, which are complicated in themselves, were even more so for Mr Quaranta on account of his personal situation: a young adult of foreign origin from an underprivileged background, he had no real occupational training and had a long criminal record. He had taken drugs since 1975, almost daily since 1983, and, at the material time, was living with his family on social security benefit.

36. In the circumstances of the case, his appearance in person before the investigating judge, and then before the Criminal Court, without the assistance of a lawyer, did not therefore enable him to present his case in an adequate manner.

37. This defect was not cured either in the Criminal Court of Cassation of the Canton of Vaud, despite the presence of a lawyer paid by the applicant, or in the Federal Court, although he was accorded free legal assistance before that court, because of the limits on the scope of the review which may be carried out by those two courts (see, as the most recent authority, mutatis mutandis, the Weber judgment of 22 May 1990, Series A no. 177, p. 20, para. 39).

38. In conclusion, there has been a violation of Article 6 para. 3 (c) (art. 6-3-c).

II.APPLICATION OF ARTICLE 50 (art. 50)

39. Article 50 (art. 50) of the Convention provides as follows:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

Under this provision Mr Quaranta claimed compensation for damage and the reimbursement of costs and expenses.

A. Damage

40. The applicant conceded that he had been accorded a partial pardon on 18 November 1987. He claimed, however, that he had sustained pecuniary damage on account of his imprisonment, which had lasted more than six months, from 21 July to 24 December 1987 (see paragraph 16 above). He also alleged non-pecuniary damage inasmuch as, in view of the fact that he had been deprived of an effective defence for a long period, he had experienced a distressing feeling of isolation, confusion and abandonment. Under these two heads he sought compensation which could be "assessed on an equitable basis" at 10,000 Swiss francs.

41. In the Government's contention, there are no grounds for asserting that the outcome of the trial would have been more favourable to the applicant if he had received free legal assistance. The claim in respect of pecuniary damage should therefore be dismissed. As regards non-pecuniary damage, they argued, on the basis of the Neumeister judgment of 7 May 1974 (Series A no. 17), that a pardon, without repairing all the consequences of a violation, played an important role in this connection so that a finding of a violation would in the present case constitute sufficient satisfaction.

42. In the opinion of the Commission's Delegate, the experience of being judged without the assistance of counsel left Mr Quaranta with a feeling of anxiety and bitterness which deserved compensation.

43. The Court does not perceive any causal connection between the breach of Article 6 (art. 6) and the alleged pecuniary damage. On the other hand, the violation found must have caused the applicant non-pecuniary damage justifying the award, assessed on an equitable basis, of 3,000 Swiss francs.

B. Costs and expenses

44. In respect of his costs and expenses the applicant claimed 10,000 Swiss francs, namely 2,000 for the proceedings before the Criminal Court of Cassation, 2,000 for the application for a pardon and 6,000 for the "European proceedings properly so called".

45. The Court considers, in agreement with the Government, that only the costs incurred in the Criminal Court of Cassation can be reimbursed, and not those referable to the application for a pardon. Mr Quaranta failed to provide any details concerning the costs relating to the proceedings in Strasbourg. Making an assessment on an equitable basis, the Court awards him a total of 7,000 Swiss francs, less the 10,441 French francs paid by the Council of Europe as legal aid.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 para. 3 (c) (art. 6-3-c) of the Convention;

2. Holds that the respondent State is to pay to the applicant, for non-pecuniary damage, 3,000 (three thousand) Swiss francs and, for costs and expenses, 7,000 (seven thousand) Swiss francs less 10,441 (ten thousand four hundred and forty one) French francs, to be converted into Swiss francs at the exchange rate applicable on the day of delivery of the present judgment;

3. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 24 May 1991.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar