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

COURT (CHAMBER)

CASE OF SANCHEZ-REISSE v. SWITZERLAND

(Application no. 9862/82)

JUDGMENT

STRASBOURG

21 October 1986

In the Sanchez-Reisse 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. W. GANSHOF VAN DER MEERSCH, *President*,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. G. LAGERGREN,
Mr. J. PINHEIRO FARINHA,
Mr. B. WALSH,
Mr. C. RUSSO,
Mr. R. BERNHARDT,

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

Having deliberated in private on 21 and 22 February, 27 June and 19 September 1986,

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

PROCEDURE

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Government of the Swiss Confederation ("the Government") on 14 March and 22 April 1985 respectively, within the three-month period provided for in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. The case originated in an application (no. 9862/82) against Switzerland lodged with the Commission on 10 May 1982 by an Argentine national, Mr. Leandro Sanchez-Reisse, under Article 25 (art. 25).

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), while the Government's application referred to Articles 45, 47 and 48 (art. 45, art. 47, art. 48). The purpose 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 5 para. 4 (art. 5-4).

· Note by the Registrar: The case is numbered 4/1985/90/137. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

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 pending before the Court and appointed the lawyer who would represent him (Rule 30).

3. The Chamber of seven judges to be constituted included, as ex officio members, Mrs. D. Bindschedler-Robert, the elected judge of Swiss nationality (Article 43 of the Convention) (art. 43), and Mr. G. Wiarda, the President of the Court (Rule 21 para. 3 (b)). On 27 March 1985, the latter drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr. D. Evrigenis, Mr. G. Lagergren, Mr. J. Pinheiro Farinha, Mr. C. Russo and Mr. R. Bernhardt (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. In his capacity as President of the Chamber (Rule 21 para. 5), Mr. Wiarda consulted, through the Registrar, the Agent of the Government, the Delegate of the Commission and the applicant's representative as to the need for a written procedure (Rule 37 para. 1). On 6 May 1985, he directed that the said Agent and representative should have until 6 August 1985 to file memorials to which the Delegate could reply within two months of the date on which the Registrar had transmitted to him the last memorial received.

The Government's memorial was received at the registry on 5 August. In a letter dated 8 August, Mr. Sanchez-Reisse's representative stated that he would submit his comments at the hearings. On 14 October, the Secretary to the Commission informed the Registrar that the same would apply as regards the Delegate's observations.

5. After consulting, through the Registrar, the Agent of the Government, the Delegate of the Commission and the applicant's representative, the President of the Court directed on 21 October 1985 that the oral proceedings should open on 24 January 1986.

6. As Mr. Wiarda and Mr. R. Ryssdal, who was elected President of the Court on 30 May 1985, were unable to attend, Mr. W. Ganshof van der Meersch, the Vice-President of the Court, acted as President (Rules 9 and 21 para. 5). Subsequently, Mr. Evrigenis was unable to take part in the consideration of the case and was replaced by Mr. B. Walsh, substitute judge (Rule 22 para. 1).

7. The hearings were held in public in the Human Rights Building, Strasbourg, on the appointed day. Immediately before they opened, the Court had held a preparatory meeting.

There appeared before the Court:

- for the Government

Mr. O. JACOT-GUILLARMOD, Head
of the International Affairs Department of the Federal
Justice Office, *Agent*,

Mr. P. SCHMID, Deputy Director

of the Federal Police Office,
Mr. B. MÜNGER, Federal Justice Office, *Counsel*;
- for the Commission
Mr. J.-C. SOYER, *Delegate*;
- for the applicant
Mr. P. GULLY-HART, avocat, *Counsel*.

The Court heard addresses by Mr. Jacot-Guillarmod for the Government, by Mr. Soyer for the Commission and by Mr. Gully-Hart for the applicant, as well as their replies to its questions.

8. At the hearing the Agent of the Government handed to the Registrar the Government's observations on the application of Article 50 (art. 50) of the Convention.

On 18 February 1986, the President of the Chamber asked the applicant's counsel to submit his own observations, which were received at the registry on 3 April.

On 24 April, the Deputy Secretary to the Commission communicated to the Registrar the Delegate's comments on those observations.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. Mr. Leandro Sanchez-Reisse, an Argentine businessman born in Buenos Aires in 1946, had for some years been resident with his wife and their two children in the United States (Florida). He was arrested in Switzerland with a view to being extradited but objected to his extradition and applied for provisional release, as described below.

A. Extradition proceedings

1. The applicant's arrest

10. On instructions from the Federal Police Office ("the Office"), the Vaud cantonal police arrested the applicant in Lausanne during the night of 12/13 March 1981 and immediately transferred him to Champ-Dollon prison in Geneva.

The authorities of the Argentine Republic had sent radio-telegrams to the authorities of the Swiss Confederation on 10 and 11 March asking for help in identifying the five persons thought to be responsible for kidnapping a Uruguayan banker, K, in Buenos Aires on 19 February. The kidnappers had demanded a ransom and had required K's wife and sister to go first to Paris,

then to Zürich - where the money was placed by them in an account opened in their name with the Crédit Suisse - and then to Geneva.

2. Extradition requests from the Argentine authorities

(a) First request

11. In a radio-telegram dated 13 March 1981, Interpol Buenos Aires requested the provisional arrest of the suspects with a view to extradition. On 16 March, the Office accordingly issued a warrant for Mr. Sanchez-Reisse's arrest, and this was served on him on 18 March 1981.

12. On 16 and 17 March, the Embassy of the Argentine Republic in Bern confirmed Interpol's request for the arrest of the five Argentine nationals. In "notes verbales" dated 6 April, 29 April and 4 May, it produced various supporting documents. Together, these notes and documents constituted a formal extradition request.

13. In a letter of 13 May 1981, the Office forwarded the documents received to the Geneva authorities, for consideration at the hearing of the applicant. Copies were sent to the latter's lawyer and to the Public Prosecutor of the Canton of Geneva ("the Public Prosecutor"). On 18 May, the Public Prosecutor suggested that the Office officially inform the Argentine authorities of offences of receiving stolen goods which Mr. Sanchez-Reisse was charged with having committed in Switzerland, but he pointed out that they had not given rise to any penalties in that country. He refused to institute proceedings in Geneva, and on 6 August the Indictments Chamber of the Canton decided that there were no grounds for opening an investigation there.

14. At the hearing held in the meantime, which was attended by his lawyer, the applicant had indicated his refusal to be extradited. In a letter of 19 June, the Office gave the lawyer until 17 August 1981 to state the reasons for his client's objections. It extended this time-limit to 17 September and subsequently to 1 October.

(b) Second request

15. In the meantime, on 26 May 1981, the Embassy of the Argentine Republic submitted letters rogatory to the Office concerning the kidnapping of an Argentine financier, C, in Buenos Aires on 8 May 1979, for which the same group of persons was thought to have been responsible. The letters rogatory were executed in Geneva on 18 June 1981. By "notes verbales" dated 8, 10 and 13 July, the Embassy formally submitted a second request for the extradition of Mr. Sanchez-Reisse, among others.

16. On 11 August, the Office instructed the Geneva cantonal authorities to hold a second hearing on the applicant's extradition, this time on the

basis of the documents relating to the kidnapping of C. At the hearing the applicant continued to resist extradition.

3. The applicant's objection to his extradition

17. On 25 September 1981, Mr. Sanchez-Reisse's lawyer sent the Office a memorandum setting out the reasons for the applicant's objection to being extradited (see paragraph 14 above). The reasons included the following: the documents submitted in support of the extradition request did not satisfy the formal requirements laid down in the Convention on the Extradition of Criminals between Switzerland and the Republic of Argentina (see paragraph 32 below), since they contained no description of the offences with which the applicant was charged; as regards the two kidnappings of which he was accused by the Argentine authorities, which were moreover of a political character, Mr. Sanchez-Reisse was innocent; if extradition was granted, it would be contrary to Articles 3 and 6 (art. 3, art. 6) of the European Convention on Human Rights, as it would expose the applicant to inhuman treatment and he would have no guarantee of a fair trial.

4. The Federal Court's judgment

18. On 3 November 1982, the Federal Court (1st Public-Law Division) accepted Mr. Sanchez-Reisse's objection and accordingly decided not to authorise his extradition. It was of the opinion that "the overall circumstances [gave it] serious reason to fear that the treatment which might be accorded to the objectors by the requesting State, either before judgment or during the enforcement of sentence, would violate the rules governing respect for human rights". The Court further decided that the offences mentioned in the extradition request should, with one exception, be the subject of a prosecution and trial by the appropriate Geneva cantonal authorities, pursuant to Article IX, first paragraph, of the Convention on Extradition. Lastly, it directed that the applicant be kept in detention with a view to extradition until the Geneva authorities had ruled on his detention on remand in the criminal proceedings that were to be instituted.

5. The criminal proceedings instituted against the applicant in Switzerland

19. On the following day, the Public Prosecutor ordered that a criminal investigation be opened against Mr. Sanchez-Reisse and the investigating judge preferred charges of, inter alia, attempted extortion against him. As a result, the detention with a view to extradition was transformed into detention on remand.

20. On 9 December 1982, the Indictments Chamber of the Federal Court instructed the Zürich cantonal authorities to prosecute the applicant and bring him to trial.

On 25 April 1983, the applicant admitted the charges of attempted extortion and blackmail in the K case (see paragraph 10 above). On 29 November 1983, the Supreme Court of the Canton of Zürich (1st Criminal Chamber) sentenced him on these charges to imprisonment for four years and nine months, subject to deduction of the 393 days he had spent in detention on remand.

21. Having been put under a regime of semi-liberty, the applicant absconded in November 1985. During his detention with a view to extradition, he had on three occasions applied for release.

B. Requests for provisional release

1. First request

22. On 9 November 1981, Mr. Sanchez-Reisse and his wife, who had been arrested at the same time and for the same reasons as he had, had requested the Office to order their provisional release. On 25 November, the Office accepted the request submitted by Mrs. Sanchez-Reisse on payment of a surety of 100,000 SF. In order to facilitate his wife's release, the applicant had withdrawn his own request.

2. Second request

23. On 25 January 1982, Mr. Sanchez-Reisse made a fresh request to the Office, arguing: that for almost a year he had been detained with a view to his extradition, whereas he had objected to the latter measure; that he was not guilty of the offences with which he was charged by the Argentine authorities; that the evidence submitted by them was manifestly inadequate; and that his state of health had seriously worsened as a result of his detention.

24. On 2 February 1982, the Office informed the applicant's lawyer that it had decided not to grant the request, which would consequently be passed to the Federal Court (see paragraph 34 below). It considered, in the light of information provided by the medical service of Champ-Dollon prison, that the medical supervision and psychiatric treatment being undergone by the applicant were compatible with his remaining in custody. It drafted a 19-page report for the Federal Court on the five Argentinians suspected of the kidnapping of K, together with an aide-mémoire.

25. On 15 February 1982, the Office forwarded the request for release to the Federal Court, together with the two documents referred to above, "so that a decision could be given by a court in accordance with Article 5 para.

4 (art. 5-4) of the European Convention on Human Rights". At the same time it expressed a negative opinion on the request since release did not seem to it to be "required by the circumstances", within the meaning of section 25 of the Federal Act of 22 January 1892 on Extradition to Foreign States (see paragraph 34 below).

26. On 25 February 1982, the Federal Court rejected the request. Mr. Sanchez-Reisse was notified of the operative provisions of the decision on the following day and of the reasons therefor on 3 March. The Federal Court took several factors into consideration: the extradition request submitted by the Argentine authorities concerned not only the kidnapping of the Uruguayan banker K but also that of the Argentine financier C, and the possibility that the applicant had been involved in one of these cases could not be ruled out; there was a real risk that he might abscond since he resided in the United States and not in his country of origin; he had not shown that he was unfit to undergo detention and, furthermore, he could obtain the assistance of a doctor in case of need.

27. In the meantime, on 18 February, Mr. Sanchez-Reisse had written to the Presidents of the Geneva Courts and to the Public Prosecutor requesting immediate release. On 23 February, a President of the Geneva Indictments Chamber said that it was for the Federal Court to give a ruling on requests for release submitted by a person who was detained with a view to extradition. On 9 March 1982, the applicant's lawyer replied that the proceedings in the Federal Court were entirely in writing and that the Court had taken a month to reach a decision. The requirements of Article 5 para. 4 (art. 5-4) had not been complied with: in particular, the detainee had not appeared in person and a decision had not been rendered speedily. The lawyer therefore confirmed the request for release and asked the Cantonal Court to give an interpretation of the provision in question. In a letter dated 15 March 1982, the three presiding judges of the Geneva Indictments Chamber stated that it was not competent to deal with the applicant's release as he had been detained with a view to extradition under a Federal arrest warrant.

3. Third request

28. On 21 May 1982, Mr. Sanchez-Reisse submitted a further request for release to the Office; he claimed that release was justified because of his deteriorating health and he supplied two medical certificates. Although the first of these, dated 18 March, stated that he could still be cared for by the prison authorities, the second, dated 18 May, reported progressive deterioration: "The lack of a frame of reference in <the applicant's> current surroundings is conducive to the development of his paranoid ideas and problems in evaluating reality."

29. The request was received by the Office on Monday, 24 May. It had just finished investigating the extradition request and therefore passed the

complete file to the Federal Court on that same day. It did not enclose any opinion, but on 2 June 1982 the Court requested it to submit one within ten days.

30. The President of the 1st Public-Law Division also informed the applicant's lawyer that the Office had been asked for information about the request for release.

31. On 6 July 1982, the Federal Court rejected the request, as the Office had recommended in an opinion of 9 June: the Court took the view that Mr. Sanchez-Reisse had provided no new material important enough to warrant making a decision different from that of 25 February 1982 (see paragraph 26 above). This decision was notified on 9 July.

II. SWISS EXTRADITION LAW

32. The procedure for extradition between Switzerland and Argentina is governed in the first instance by a bilateral treaty and, subsidiarily, by municipal law.

The Convention on the Extradition of Criminals between Switzerland and the Republic of Argentina, signed on 21 November 1906, has been binding on both countries since 1912. It lays down the formal and substantive conditions applying to extradition between the two countries but does not, either expressly or tacitly, deal with the methods to be used by the courts for supervising detention with a view to extradition. It is therefore Swiss law which applies on this point. At the time of the facts in question and until 31 December 1982, the instrument applicable was an Act of 1892.

1. The Federal Act of 22 January 1892 on Extradition to Foreign States

33. The Federal Act of 22 January 1892 on Extradition to Foreign States ("the 1892 Act") instituted a sharing of powers in the field in question between the Federal Council (Central Government) (which, for obvious practical reasons, had delegated its powers to the Federal Police Office) and the Federal Court, the only judicial authority in Switzerland with jurisdiction in extradition matters.

(a) The Federal Police Office

34. It was to the Office that requests for provisional arrest with a view to extradition and formal extradition requests were addressed. The Office corresponded directly with the accredited diplomatic missions in Bern - without necessarily going through the Federal Department of Foreign Affairs - and with the Secretariat General and the national central offices of Interpol. It decided whether there was a case for arresting the wanted person and, if so, served on that person a "warrant for arrest with a view to extradition", which was immediately enforceable throughout Swiss territory.

Once the person had been arrested, it was the Office which conducted the proceedings. It ordered that he be heard by the appropriate cantonal authorities on the extradition request, appointed counsel to represent him if necessary, corresponded with the lawyers involved and informed them of the time-limits to be observed, checked the detainee's mail and granted or refused him the right to be visited, authorisation to make telephone calls, and so on.

Above all, it was the Office itself which, in most cases, ruled on extradition requests and requests for provisional release.

The former power (to rule on extradition requests) was conferred by section 22 of the 1892 Act and was exercisable where "the arrested individual [had] indicated his consent to his being handed over without delay and ... there [was] no legal impediment to his extradition, or ... he [had] opposed it only on grounds not based on [the 1892] Act, on the Treaty or a declaration of reciprocity ...".

The second power (to rule on requests for provisional release) was conferred by section 25, second paragraph, and was exercisable in all cases where the matter had not been referred to the Federal Court. The Office could grant release if this appeared to be required by the circumstances (section 25, first paragraph).

Furthermore, whenever the Federal Court was to give a ruling, the Office carried out the requisite investigations. If the Court refused to authorise extradition, the Office was bound by that decision. On the other hand, if the Court authorised extradition, the Office could still, for important reasons of political expediency, refuse to extradite the person concerned.

Lastly, it was for the Office to give instructions for the handing over of the person extradited, arrange the practical details and inform the foreign State of the action taken on its request.

(b) The Federal Court

35. The Federal Court was involved in extradition proceedings in two sets of circumstances.

If the arrested person protested against the extradition itself by raising an objection based on the Act, a treaty or a declaration of reciprocity (section 23), the Federal Court was competent to rule on the merits of the extradition (section 24), if necessary after ordering additional investigations (section 23, second paragraph) and the personal appearance of the detainee (section 23, third paragraph). In the latter event - which was very rare -, the hearing took place in public, unless there were serious reasons to the contrary (section 23, third paragraph), and the detainee could be assisted by a lawyer, assigned by the court if need be.

Where the case had been referred to it (section 25, second paragraph), i.e. if an objection related to the extradition itself, the Federal Court was also responsible for ruling on any request for provisional release lodged by the

person who was detained with a view to extradition. It could authorise his release if it appeared that the circumstances so required (section 25, first paragraph).

2. Exchange of letters in 1976-77 between the Federal Department of Justice and Police and the Federal Court

36. In a report to the Federal Assembly in 1968, the Swiss Government drew attention to a number of shortcomings in the 1892 Act from the point of view of the European Convention on Human Rights which it was contemplating ratifying:

> "Persons provisionally arrested on the orders of the Federal Department of Justice and Police, in compliance with the wishes of the requesting State, have no right of appeal to a court against the decision to arrest them. The Federal Act on Extradition to Foreign States is, however, being revised, and it is planned to take this opportunity to provide for an appeal to a court against arrests, in accordance with Article 5 para. 4 (art. 5-4) of the Convention." (Federal Bulletin, 1968, vol. II, pp. 1102-1103)

37. The Confederation ratified the Convention on 28 November 1974. Although declared inadmissible by the Commission on 6 October 1976 (Decisions and Reports no. 6, pp. 141-155), the Lynas v. Switzerland application (no. 7317/75) revealed that the extradition law fell short of the requirements of Article 5 para. 4 (art. 5-4). The Government considered that, pending the entry into force of a new Federal Act on international mutual assistance in criminal matters, it should adopt a solution that would meet any difficulty encountered. Taking as its basis the fact that Article 5 para. 4 (art. 5-4) was directly applicable in Switzerland, the Federal Department of Justice and Police took the initiative of exchanging views with the Federal Court. By an exchange of (unpublished) letters dated 27 December 1976, 28 January 1977, 29 April 1977 and 9 May 1977, the two institutions agreed to interpret sections 22 to 25 of the Act, in particular the second paragraph of section 25, in such a way as to establish the general and exclusive jurisdiction of the Federal Court (1) to rule on any objection lodged against arrest with a view to extradition (from then on this legal remedy was expressly mentioned on the back of the arrest warrant, receipt of which had to be acknowledged in writing by the person concerned), and (2) to rule on any request for provisional release, even when, by reason of the absence of any objection to the request for extradition, the Federal Court had no jurisdiction over the merits of the matter.

38. The transitional arrangements introduced as a result of the exchange of letters were enshrined in the Federal Act of 20 March 1981 on International Mutual Assistance in Criminal Matters ("the 1981 Act"), which came into force on 1 January 1983, that is after the conclusion of the proceedings at issue in the present case. The Indictments Chamber of the Federal Court rules not only on appeals against warrants for arrest with a view to extradition (section 48, second paragraph, taken in conjunction with

section 47, first paragraph) but also on appeals against any decision by the Office refusing provisional release (section 50, fourth paragraph; judgment of 8 April 1983, Collection of Judgments of the Swiss Federal Court, vol. 109, part IV, p. 60).

As regards extradition itself, the Office is now competent to rule at first instance (section 55, first paragraph). If, however, the person concerned claims that he "is being proceeded against because of a political offence" or if "the investigation gives serious grounds for thinking that the offence is of a political character", the decision rests with the Federal Court (section 55, second paragraph).

The Office's decision can be challenged in the Federal Court by way of an administrative-law appeal (section 55, third paragraph).

PROCEEDINGS BEFORE THE COMMISSION

39. Mr. Sanchez-Reisse lodged his application (no. 9862/82) with the Commission on 10 May 1982. He claimed that the procedure adopted by the Federal Court for considering his requests for release was in breach of Article 5 para. 4 (art. 5-4) of the Convention.

40. The Commission declared the application admissible on 18 November 1983.

In its report adopted on 13 December 1984 (Article 31) (art. 31), the Commission expressed the unanimous opinion that there had been a breach of Article 5 para. 4 (art. 5-4), since the requirements of procedure and speed laid down therein had not been complied with in the proceedings in question.

The full text of the Commission's opinion and of the separate opinion contained in the report is reproduced as an annex to the present judgment.

FINAL SUBMISSIONS MADE TO THE COURT

41. At the hearing on 24 January 1986, the applicant's lawyer and the Commission's Delegate asked the Court to hold that there had been a breach of Article 5 para. 4 (art. 5-4) of the Convention.

The Agent of the Government reiterated the final submission in his memorial of 5 August 1985, in which he requested "the Court to rule that in the present case Article 5 para. 4 (art. 5-4) of the Convention was not violated, either as concerns the procedure applied or as concerns the requirement of 'speedy decision'".

AS TO THE LAW

I. ALLEGED BREACH OF ARTICLE 5 para. 4 (art. 5-4)

42. The applicant relied on Article 5 para. 4 (art. 5-4) of the Convention, which provides:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

He claimed that the examination of the requests for release which he made on 25 January and 21 May 1982 had not satisfied the requirements of the above-cited provision, either as regards the procedure followed or as regards the time taken; his application of 9 November 1981 does not fall to be considered, since he withdrew it (see paragraph 22 above).

A. The procedure followed

43. Mr. Sanchez-Reisse alleged that the Swiss system for appealing against detention with a view to extradition did not, at the time, afford adequate safeguards when measured against Article 5 para. 4 (art. 5-4).

1. No direct access to a court

44. In the first place, he complained of the fact that he had not been able to apply directly to a court. Being obliged, like anyone who was detained with a view to extradition, to turn first of all to an administrative body, he did not have, so he maintained, direct access to the judicial authority competent to hear a request by him for provisional release.

The Commission found it surprising that the courts could entertain such a request only if it was accompanied by comments from the executive, which by definition would have refused release.

In the Government's submission, on the other hand, there was nothing to prevent the Contracting States from regulating access to the courts as long as the measures taken were in the interests of the proper administration of justice.

45. As Mr. Sanchez-Reisse had stated that he objected to being extradited, the Federal Court had exclusive jurisdiction to rule on the question of release (section 25 of the 1892 Act; see paragraph 35, third sub-paragraph, above). Although, legally speaking, the request was addressed solely to the Federal Court, the practice - since enshrined in the 1981 Act (see paragraph 38 above) - was that the request went first to the Office, which examined it and gave an opinion thereon.

The Court considers that the intervention of the Office did not impede the applicant's access to the Federal Court or limit the latter's power of review. Moreover, it may meet a legitimate concern: as extradition, by its very nature, involves a State's international relations, it is understandable that the executive should have an opportunity to express its views on a measure likely to have an influence in such a sensitive area.

2. Impossibility of conducting one's own defence

46. The applicant made a second complaint, concerning the impossibility of conducting one's own defence, due to the fact that the exclusively written nature of the procedure necessitated the assistance of a lawyer. He alleged that a detainee needed to be able to check the action taken by the lawyer, in particular by attending the oral proceedings, especially as the latter might have been appointed by the Office.

The Government confined themselves to stating that the Convention did not afford an absolute right to conduct one's own defence, since the absence of a lawyer might, in certain instances, be prejudicial to the person concerned. The Commission, for its part, expressed no opinion on this point.

47. In the Court's view, the allegation of the applicant - who in fact chose his lawyer himself - does not stand up to examination. It has no basis in the actual text of Article 5 para. 4 (art. 5-4). What is more, it loses sight of the fact that Swiss law, by requiring the assistance of a lawyer, affords an important guarantee to the person concerned by an extradition procedure. The detainee is, by definition, a foreigner in the country in question and therefore often unfamiliar with its legal system. Furthermore, Mr. Sanchez-Reisse furnished no evidence that his legal knowledge was sufficient to enable him to present his requests effectively in writing.

3. Impossibility of replying to the Federal Police Office's opinion and of appearing in person before a court

48. Mr. Sanchez-Reisse also alleged that he should have had an opportunity of replying to the Office's opinion, which was ex hypothesi negative since its very existence presupposed a refusal on the part of the administrative authority to grant release.

At the same time he complained of the fact that he had not been able to appear - either as of right or on his application - before a court in order to argue the case for his release. In his view, this was the cause of the worsening of his state of health, which was the main ground of his requests for release. The lack of any contact with a court was, he said, incompatible with the very nature of habeas corpus. It was all the harsher as detention with a view to extradition afforded the detainee fewer points of reference than ordinary pre-trial detention: in Switzerland a court hearing extradition

cases confined itself to reviewing compliance with the conditions of the treaty and thus did not consider the merits of the charge.

49. The Government maintained that the Office's opinion was the counterpart of the reasons adduced by the detainee in support of his request for release. There was thus equality of arms.

The Government also disputed the existence of any right to appear in person. They advocated a systematic interpretation of Article 5 (art. 5), stressing notably a contrast between paragraphs 3 and 4 (art. 5-3, art. 5-4); they relied in this connection on the Court's case-law, in particular the Winterwerp judgment of 24 October 1979 and the judgment of 5 November 1981 in the case of X v. the United Kingdom. In the Government's submission, to deprive a person against whom extradition proceedings were being taken of his liberty was a measure of international co-operation, and this made the particular circumstances of the individual of secondary importance.

50. The Commission's Delegate made the following submissions. By communicating the request to the Federal Court, the Office indicated its opposition to release and could give detailed reasons at its convenience. Even if the person concerned managed to obtain a copy of the opinion, he did not have the opportunity to reply to it; in practice, his right to be heard extended no further than the presentation of his request. As no provision was made for a reply, the procedure in question was unbalanced; it did not guarantee the "minimum adversarial element" called for by Article 5 para. 4 (art. 5-4).

On the other hand, the Delegate considered that proceedings conducted entirely in writing might meet the requirements of Article 5 para. 4 (art. 5-4) if the person concerned had the assistance of a lawyer and the possibility of challenging the lawfulness of his detention in the competent courts. In his view, it was not essential for the applicant to appear in person before the Federal Court.

51. In the Court's opinion, Article 5 para. 4 (art. 5-4) required in the present case that Mr. Sanchez-Reisse be provided, in some way or another, with the benefit of an adversarial procedure.

Giving him the possibility of submitting written comments on the Office's opinion would have constituted an appropriate means, but there is nothing to show that he was offered such a possibility. Admittedly, he had already indicated in his request the circumstances which, in his view, justified his release, but this of itself did not provide the "equality of arms" that is indispensable: the opinion could subsequently have referred to new points of fact or of law giving rise, on the detainee's part, to reactions or criticisms or even to questions of which the Federal Court should have been able to take notice before rendering its decision.

The applicant's reply did not, however, necessarily have to be in writing: the result required by Article 5 para. 4 (art. 5-4) could also have been attained if he had appeared in person before the Federal Court.

The possibility for a detainee "to be heard either in person or, where necessary, through some form of representation" (see the above-mentioned Winterwerp judgment, Series A no. 33, p. 24, para. 60) features in certain instances among the "fundamental guarantees of procedure applied in matters of deprivation of liberty" (see the De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, p. 41, para. 76). Despite the difference in wording between paragraph 3 (right to be brought before a judge or other officer) and paragraph 4 (right to take proceedings) of Article 5 (art. 5-3, art. 5-4), the Court's previous decisions relating to these two paragraphs have hitherto tended to acknowledge the need for a hearing before the judicial authority (see, inter alia, in addition to the above-mentioned Winterwerp judgment, the Schiesser judgment of 4 December 1979, Series A no. 34, p. 13, paras. 30-31). These decisions concerned, however, only matters falling within the ambit of sub-paragraphs (c) and (e) in fine of paragraph 1 (art. 5-1-c, art. 5-1-e). And, in fact, "the forms of the procedure required by the Convention need not ... necessarily be identical in each of the cases where the intervention of a court is required" (see the above-mentioned De Wilde, Ooms and Versyp judgment, Series A no. 12, pp. 41-42, para. 78).

In the present case, the Federal Court was led to take into consideration the applicant's worsening state of health, a factor which might have militated in favour of his appearing in person, but it had at its disposal the medical certificates appended to the third request for provisional release from custody (see paragraph 28 above). There is no reason to believe that the applicant's presence could have convinced the Federal Court that he had to be released.

Nevertheless, it remains the case that Mr. Sanchez-Reisse did not receive the benefit of a procedure that was really adversarial.

4. Recapitulation

52. To sum up, the procedure followed in the two cases in dispute did not, viewed as a whole, fully comply with the guarantees afforded by Article 5 para. 4 (art. 5-4).

B. Length of the proceedings

53. Before compliance with the requirement that decisions be taken "speedily" is considered, the duration of the proceedings in question needs to be established.

1. Periods to be taken into consideration

54. As regards the commencement of the periods to be taken into consideration, the applicant maintained that they began with the submission to the Office of his requests for provisional release. The Government, on the other hand, claimed that only the proceedings before the Federal Court were relevant. Like the Commission, the Court notes that submission of the request to the Office opens the administrative stage of the proceedings and is the prerequisite for the Federal Court's exercise of "judicial supervision of the lawfulness of the measure" (see the above-mentioned De Wilde, Ooms and Versyp judgment, Series A no. 12, p. 40, para. 76). The relevant dates in this case are therefore 25 January and 21 May 1982.

The periods in question ended on 25 February and 6 July 1982 respectively, on which dates the requests were rejected (see paragraphs 26 and 31 above).

The total duration of the periods to be considered is thus thirty-one days in the first instance and forty-six days in the second.

2. Compliance with the requirement that decisions be taken "speedily"

55. It remains to be established whether these periods comply with the requirement of Article 5 para. 4 (art. 5-4) that decisions be taken "speedily". In the Court's view, this concept cannot be defined in the abstract; the matter must - as with the "reasonable time" stipulation in Article 5 para. 3 and Article 6 para. 1 (art. 5-3, art. 6-1) (see the established case-law) - be determined in the light of the circumstances of each case.

56. In this connection, the Government relied on various factors which, taken together, they regarded as satisfactorily explaining and excusing the length of time taken in the two instances: the nature of detention with a view to extradition, which can hardly be dissociated from the extradition procedure; the mixed nature - administrative and then judicial - of the relevant procedure and the fact that the decision on the merits, i.e. on the guilt or innocence of the person concerned, will in principle be made by a foreign court; in this case, in addition, the lateness of the requests for release; the reasons justifying continued detention, such as the gravity of the offences of which the applicant was accused and the risk of his absconding; the complexity of the question of extradition; the advanced state of the extradition procedure; the links between the applicant's case and those of his accomplices; the difference in what was at stake, for Mr. Sanchez-Reisse, between the outcome of his objection to extradition and that of his requests for provisional release.

57. Admittedly, the extradition issue formed the backcloth to the requests for release and necessarily influenced the Office's and subsequently the Federal Court's consideration of the matter. Furthermore, in this area, whenever a foreign State's request for extradition does not, at the outset, appear unacceptable to the authorities of the country in which the person concerned is present, detention is the rule and release the exception.

The fact nevertheless remains that the applicant was entitled to a speedy decision - whether affirmative or negative - on the lawfulness of his custody. The decisions of 25 February and 6 July 1982 clearly show, moreover, that the Federal Court confined its examination to the requests in question: after succinctly stating the facts, it weighed the risks of maintaining Mr. Sanchez-Reisse's detention and those of provisionally releasing him. There is no reason to believe that the problem was a complex one, necessitating detailed investigation and warranting lengthy consideration. More particularly, whilst the applicant's state of health was undoubtedly inseparable from other considerations, the latter were readily apparent in a case-file that had been under examination for approximately a year.

58. To these comments, which are valid for both sets of proceedings, must be added others specific to each.

59. With regard to the second request - the first, which the applicant withdrew (see paragraph 22 above), is not relevant -, the Commission noted - and the Government did not contest this - that the only new element was Mr. Sanchez-Reisse's state of health (see paragraph 23 above). This point had given rise to a brief investigation during which the Office had contacted the medical service of Champ-Dollon prison, with the result that the competent authority was in a position to take a prompt decision. The Office nevertheless needed twenty-one days and the Federal Court a further ten, making thirty-one in all. The Court considers such a delay unwarranted.

60. As to the third request, the Office forwarded it to the Federal Court without expressing an opinion. Although in possession of the full case-file, the Court, in accordance with its practice, therefore deferred its decision until such time as it had received the opinion, and this entailed a few days' delay (see paragraphs 29 and 31 above).

In explanation of the duration of the proceedings, which was half as long again as on the first occasion, the Government made a number of points: the Federal Court was going through a very busy period; it was on the point of giving its decision as to extradition itself, which meant that the case no longer had priority; it could not do otherwise than reject the request because it was based on grounds identical to those of the previous one.

The Court does not see why these factors should have deprived Mr. Sanchez-Reisse of the guarantee of rapidity prescribed in Article 5 para. 4 (art. 5-4). After all, the matter was particularly straightforward because the applicant had raised it in similar terms in an earlier request. Here too, therefore, the period in question - twenty days at the Office and a further twenty-six days at the Federal Court - was excessive.

3. Recapitulation

61. To sum up, the time which elapsed between the lodging of the requests and the decisions thereon did not satisfy the requirement of "speed" laid down in Article 5 para. 4 (art. 5-4).

II. THE APPLICATION OF ARTICLE 50 (art. 50)

62. In respect of costs and expenses, the applicant claimed just satisfaction pursuant to Article 50 (art. 50), which reads:

> "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."

The claim, submitted in writing on 3 April 1986 (see paragraph 8 above), concerned only lawyer's fees (5,000 SF) and travel and hotel expenses (1,868 SF).

In his comments of 24 April (see paragraph 8 above), the Delegate of the Commission indicated that he found the claim reasonable.

The Government, for their part, lodged observations on 24 January 1986 (see paragraph 8 above). Envisaging purely in the alternative the possibility of the Court's finding a violation of the Convention, they considered the application of Article 50 (art. 50) to be ready for decision and did not in principle contest Mr. Sanchez-Reisse's claim. However, they invited the Court to take into account, if appropriate, the rejection of certain complaints and insisted that any amounts awarded be in some wise proportionate to those awarded in two earlier cases concerning Switzerland (Minelli; Zimmermann and Steiner).

63. The Court considers that the conditions which emerge from its case-law (see, inter alia, the Minelli judgment of 25 March 1983, Series A no. 62, p. 20, para. 45) are met and therefore accepts the applicant's claim.

FOR THESE REASONS, THE COURT

1. Holds by five votes to two that there has been a violation of Article 5 para. 4 (art. 5-4) of the Convention on account of the non-compliance with procedural guarantees;

2. Holds by six votes to one that there has been a violation of Article 5 para. 4 (art. 5-4) on account of the failure to take decisions "speedily";

3. Holds by six votes to one that the respondent State is to pay to the applicant six thousand eight hundred and sixty-eight Swiss francs (6,868 SF) for costs and expenses.

Done in English and in French, and delivered at a public hearing at the Human Rights Building, Strasbourg, on 21 October 1986.

Walter GANSHOF VAN DER MEERSCH
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 52 para. 2 of the Rules of Court, the following separate opinions are annexed to the present judgment:

- joint concurring opinion of Mr. Ganshof van der Meersch and Mr. Walsh;

- partly dissenting opinion of Mrs. Bindschedler-Robert;

- dissenting opinion of Mr. Pinheiro Farinha.

W. G.v.d.M.
M.-A. E.

CONCURRING OPINION OF JUDGES GANSHOF VAN DER MEERSCH AND WALSH

(Translation)

While concurring in the result, we regret that we are unable to agree with the reasoning in the judgment in respect of one matter.

In our view, a procedure exclusively in writing is not sufficient to satisfy the requirements of Article 5 para. 4 (art. 5-4) of the Convention, even if the person concerned is assisted by a lawyer and has the right to challenge the lawfulness of his detention in the appropriate courts.

Although Article 5 para. 4 (art. 5-4) is silent on the point, it seems to us that this provision is fully satisfied only if the detainee has an opportunity to be heard in person. The Article in question (art. 5-4) is based on the institution of habeas corpus, which is based on the principle that the person concerned appears in flesh and blood before the court.

Such a view is moreover consistent with previous decisions of the Court, which has hitherto tended - as the judgment points out - to recognise the need for a court hearing. Admittedly, the case-law so far concerns only the eventualities contemplated in sub-paragraphs (c) and (e) in fine of paragraph 1 (art. 5-1-c, art. 5-1-e), but we see no reason why it should not also apply to a person "against whom action is being taken with a view to ... extradition" (sub-paragraph (f)) (art. 5-1-f).

In short, the applicant’s appearance in person before the Federal Court was necessary in the instant case.

PARTIALLY DISSENTING OPINION OF JUDGE BINDSCHEDLER-ROBERT

(Translation)

I agree with the majority in holding, as to the second application for release (but not the first one), that the requirement that decisions must be taken "speedily" was not complied with. On the other hand, I regret that I cannot follow the majority as regards the procedural requirements it believes must be inferred from Article 5 para. 4 (art. 5-4).

I am of the view that the "proceedings" contemplated in that provision are not to be equated with the civil or criminal proceedings envisaged in Article 6 (art. 6); their purpose is to allow judicial supervision of administrative measures and they may be instituted afresh for as long as detention lasts. The safeguards of Article 6 (art. 6) do not therefore apply; what matters is that the procedure followed should enable the court to take a decision in full knowledge of the facts.

It will be noted, moreover, that a more complicated procedure would run a great risk of failing to comply with the requirement in Article 5 para. 4 (art. 5-4) that the decision should be taken "speedily"; doubtless it is no accident that Article 6 (art. 6) itself provides that a hearing must take place within a reasonable time. The requirement to take a decision "speedily" is certainly to be associated with simplified procedure (Neumeister judgment of 27 June 1968, Series A no. 8, p. 44, para. 24).

Admittedly the Court has already held in previous cases that a court hearing is necessary too in connection with Article 5 para. 4 (art. 5-4). In the Schiesser case, however, it repeated that the safeguards entailed by the judicial procedure stipulated in this provision had to be "appropriate to the kind of deprivation of liberty in question" (judgment of 4 December 1979, Series A no. 34, p. 13, para. 30, in which the De Wilde, Ooms and Versyp judgment of 18 June 1971 is cited, Series A no. 12, p. 41, para. 77). In cases where review of the lawfulness of detention covers the merits of the disputed measure - as where confinement of a mentally ill person is involved (Winterwerp judgment of 24 October 1979, Series A no. 33, p. 24, para. 60) - it may be necessary to require that an applicant be heard in person. The situation is different, however, in the case of extradition, where detention is the rule, as the requested State may be required under international law to hand over the person being proceeded against to the requesting State - without any further requirements having to be satisfied. Furthermore, detention pending extradition, contrary to the type of detention at issue in the Winterwerp case, is an interim measure determined merely by the existence of an administrative extradition procedure. In the instant case, moreover, the applicant was not challenging the lawfulness of his detention nor that of the extradition procedure (which he did in the extradition

proceedings themselves); he was merely seeking to be provisionally released, as was permitted on certain conditions by the law in force in Switzerland at the time (section 25 of the Federal Act of 22 January 1892 on Extradition to Foreign States). It could even be disputed that these were proceedings within the meaning of Article 5 para. 4 (art. 5-4). However that may be, the authority empowered to grant provisional release could only do so if there were weighty considerations in favour of such a step, and even then it was not bound to do so. There accordingly did not exist any individual right to (provisional) release.

The reason put forward by the applicant in the present case was his state of health, which he claimed had been seriously worsened by the detention; the truth and the seriousness of this were attested in medical certificates, and it is unlikely that the applicant's appearance in person would have been of assistance to the court in reaching a view of the question; besides, nothing prevented the court from obtaining additional medical opinions.

Having regard to all the foregoing considerations and to the circumstances as a whole, it seems to me that - at least in general - provisional-release measures taken in connection with extradition proceedings must not be subject to complex procedure based on a civil procedure - with a double exchange of pleadings, or at all events an opportunity to express views on the submissions made by the "opposing side" - and that in the instant case neither the position in Swiss law (discretion of the decision-making body) nor the reason put forward (state of the applicant's health) called for any departure from that rule.

DISSENTING OPINION OF JUDGE PINHEIRO FARINHA

(Translation)

I cannot agree with the majority.

1. I consider that the Federal Police Office's opinion was the counterpart of the reasons put forward by the detainee in support of his application for release, such that equality of arms was ensured. It is unthinkable that pleadings should be exchanged indefinitely.

2. I hold that there was no failure to take decisions speedily: the applicant's detention was lawful in itself and the fact that the proceedings were being taken with a view to extradition justified making a more thorough appraisal than usual.

3. Having concluded that there was no breach of Article 5 para. 4 (art. 5-4) of the Convention, I do not consider it logical that the applicant should, in the same judgment, be granted just satisfaction.