

# **BGE 20010927\_46220\_99 vom 27. September 2001**

Bundesgericht (BGE), 2001-09-27, FR

Quelle: [https://mcp.opencaselaw.ch/entscheid/bge\\_20010927\\_46220\\_99](https://mcp.opencaselaw.ch/entscheid/bge_20010927_46220_99)

FR: BGE 20010927\_46220\_99 du 27 septembre 2001

IT: BGE 20010927\_46220\_99 del 27 settembre 2001

## **Regeste**

Regeste Diese Zusammenfassung existiert nur auf Französisch. DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 34 et 6 par. 1 CEDH. Qualité de victime pour se plaindre de l'équité de la procédure pénale. Le Tribunal fédéral a examiné au fond le recours de droit public et l'a rejeté sans que le requérant ait pu s'exprimer sur les arguments de l'instance inférieure. Toutefois, le même jour, le Tribunal fédéral a admis le pourvoi en nullité et annulé l'arrêt de la Cour d'appel du canton de Zurich, qui a rendu un nouveau jugement acquittant l'intéressé. La Cour estime que tout vice de procédure a ainsi été réparé et que le requérant ne peut plus se prétendre victime au sens de l'art. 34 CEDH. Conclusion: requête déclarée irrecevable.

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## **Erwägungen**

### **E. 1**

The applicant complains under Article 6 § 1 of the Convention that, contrary to the Court's case-law expressed in the Nideröst Huber case (see the judgment cited above), the Federal Court did not offer him the possibility to reply to the submissions of the Court of Cassation. It is submitted that the Federal Court, in its judgment of 3 June 1998 on the applicant's public law appeal, referred in substance to the submissions of the lower instance.

### **E. 2**

Also under Article 6 § 1 of the Convention the applicant complains that the Federal Court on 3 June 1998, after upholding his plea of nullity and instead of striking his public law appeal off the list of cases, unnecessarily dealt in substance with it and dismissed it, thus bringing about court costs of CHF 2,000.

### **E. 3**

The applicant complains that the imposition of court costs in the Federal Court's judgment of 3 June 1998 concerning his public law appeal breached Article 6 § 2 of the Convention, as the Federal Court in fact referred to his guilt. Erwägungen THE LAW The applicant complains under Article 6 § 1 of the Convention that the Federal Court did not offer him the possibility to reply to the submissions of the Court of Cassation. Under this provision he furthermore complains that the Federal Court did not strike his public law appeal off the list of cases. The applicant also complains that the imposition of court costs in the Federal Court's judgment of 3 June 1998 concerning his public law appeal breached Article 6 § 2 of the Convention. Article 34 of the Convention provides, insofar as relevant: "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto ..." It is true that in the present case the Federal Court on 3 June 1998 dealt in substance with the applicant's public law appeal and then dismissed it. This decision the applicant is now contesting before the Court. However, the Court also notes that on 3 June 1998, in a separate decision, the Federal Court upheld the applicant's plea of nullity on the ground that the applicant had been incorrectly convicted, and it quashed the judgment of the Court of Appeal of the Canton of Zürich of 23 September 1996. As a result, proceedings were resumed before the Court of Appeal which on 19 October 1998 acquitted the applicant. In the Court's opinion, any defects which may have arisen during the criminal proceedings instituted against the applicant must be considered as having been rectified by the finding of the Federal Court according to which the applicant had been incorrectly convicted, and by his subsequent acquittal by the Court of Appeal (see application no. 18763/91, decision of 12 January 1994, DR 76-A, p. 36; application no. 8083/77, decision of 13 March 1980, DR 19, p. 226). Thus, the applicant has sought and gained redress for his complaints about his criminal conviction before the Swiss courts. It follows that he can not now claim to be the "victim" of a violation of the Convention as required by Article 34 of the Convention. The application is therefore manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected under Article 35 § 4 of the Convention. Entscheid For these reasons, the Court unanimously Declares the application inadmissible. Erik Fribergh Christos Rozakis Registrar President

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