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Cases

B.K. v. Switzerland: Equality of Arms When a Court Relies on Information Obtained on Its Own Initiative

JurisPONt Case Note

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Abstract

In B.K. v. Switzerland, the European Court of Human Rights found a violation of Article 6 §1 after the Swiss Federal Supreme Court relied on information it had obtained on its own initiative without giving the applicant an opportunity to comment. The judgment clarifies the reach of equality of arms and adversarial proceedings when factual material enters judicial reasoning through the court itself.

On 22 October 2026, the European Court of Human Rights delivered its judgment in *B.K. v. Switzerland*, concerning two applications arising from the applicant's detention at Pöschwies Prison and the proceedings that followed before the Swiss authorities and the Federal Supreme Court.

Although the case initially raised several Convention complaints, the point on which Strasbourg ultimately found a violation was narrower and procedurally significant: may a supreme court rely on information obtained on its own initiative without first giving the affected party a meaningful opportunity to comment on it?

The Court's answer was no.

The judgment is important beyond the particular circumstances of prison litigation. It illustrates how the principle of equality of arms operates when courts themselves supplement the factual record and shows that adversarial proceedings remain a requirement even where the disputed information is introduced not by the opposing party, but by the court.

From detention conditions to procedural fairness

The applicant, B.K., a Swiss national, complained about various aspects of his detention at Pöschwies Prison between August 2018 and March 2021.

His applications raised issues under Articles 3, 6, 8 and 13 of the European Convention on Human Rights.

Much of the litigation concerned conditions of detention and the domestic avenues available for challenging them. The European Court ultimately declared the applicant's complaints under Article 3 and the entirety of his second application inadmissible for failure to exhaust domestic remedies.

The surviving issue concerned the civil limb of Article 6 §1 and the proceedings before the Swiss Federal Supreme Court.

That procedural question became decisive.

Information obtained by the Federal Supreme Court

During the domestic proceedings, the Federal Supreme Court referred to information concerning alleged damage caused by the applicant to a newly allocated prison cell.

The difficulty was not simply that this information was adverse to the applicant.

It was that the Federal Supreme Court had obtained the material on its own initiative and relied on it — at least subsidiarily — when concluding that the applicant's appeal was abusive.

The applicant had not been given an opportunity to comment on that information before the court ruled.

That distinction matters.

Adversarial proceedings are sometimes understood primarily as a right to respond to arguments or evidence submitted by the opposing party. The Strasbourg Court's approach makes clear that the protection is broader. What matters is whether material capable of influencing the judicial decision has entered the proceedings and whether the party affected by it has had a genuine opportunity to address it.

Equality of arms is not limited to party-produced evidence

Article 6 §1 guarantees a fair hearing.

One component of that guarantee is equality of arms: each party must have a reasonable opportunity to present its case under conditions that do not place it at a substantial disadvantage.

Closely connected is the principle of adversarial proceedings. Parties must normally be able to know and comment on evidence or observations placed before the court for the purpose of influencing its decision.

In *B.K.*, the information at issue did not originate from the opposing party.

That did not remove the procedural problem.

Once a court obtains information independently and introduces it into its reasoning, the question becomes whether the litigant was allowed to challenge its accuracy, relevance or legal significance.

The right to comment is therefore concerned with the effect of the material on judicial decision-making, not merely with its formal source.

The importance of reasons

The Court also attached importance to the absence of reasons explaining why the applicant had not been given an opportunity to respond.

That point deserves attention.

There may be procedural contexts in which a court can legitimately act on information without initiating an extended new round of submissions. But where the material contributes to an adverse conclusion, the absence of any explanation for denying the party an opportunity to comment becomes difficult to reconcile with Article 6.

In this case, the Federal Supreme Court explicitly referred to the information and used it, at least as a subsidiary ground, in dismissing the appeal as abusive.

The European Court therefore found that the proceedings had not respected the required equality of arms.

Why the finding is significant

The judgment does not announce a radically new principle. Its importance lies rather in applying a well-established procedural guarantee to a situation in which the court itself became the source of additional factual material.

That situation is increasingly relevant.

Modern judicial proceedings allow courts rapid access to information outside the traditional case file. Digital registers, publicly accessible databases, online sources and institutional records can all be consulted with relative ease.

The technical ability to verify or supplement facts does not eliminate procedural safeguards.

A court that conducts its own inquiry may, depending on the circumstances, create a new element in the case. If that element is capable of affecting the outcome, fairness may require disclosure and an opportunity for the parties to respond.

The principle is simple: judicial initiative cannot become a route around adversarial procedure.

A lesson for digital adjudication

The case also has a broader contemporary relevance.

As courts increasingly operate in digitally enriched environments, the distinction between the formal case file and information accessible to judges becomes less clear.

A judge may consult an official register. A court may verify information from another public authority. Digital tools may make factual checking almost instantaneous.

Future use of AI-assisted legal research may make this boundary still more difficult to police.

B.K. v. Switzerland does not concern artificial intelligence, and it should not be presented as an AI judgment. But its procedural logic is readily transferable.

The greater a court's ability to obtain information independently, the more important it becomes to preserve transparency about what material actually influenced the decision.

A party cannot meaningfully challenge a factual proposition that it never knew had entered the judicial reasoning.

Exhaustion of domestic remedies remains decisive

The judgment is equally instructive for what the European Court did not examine.

The applicant's Article 3 complaint concerning detention conditions was rejected for non-exhaustion of domestic remedies. The second application was likewise declared inadmissible in its entirety on that basis.

This illustrates a recurring feature of Strasbourg litigation.

The European Court is not a substitute for domestic courts. Applicants must normally give national authorities a genuine opportunity to address the alleged violation through the remedies available in the domestic legal system.

A potentially serious substantive complaint can therefore fail at Strasbourg if the procedural route at national level has not first been properly pursued.

In *B.K.*, this filtering function of Article 35 operated alongside the successful Article 6 complaint.

The judgment and Swiss judicial practice

For Switzerland, the case is particularly relevant to appellate proceedings before the Federal Supreme Court.

The Strasbourg finding does not suggest that the Federal Supreme Court may never obtain information of its own initiative.

Rather, it draws attention to the procedural consequences when such information becomes relevant to the outcome.

Where independently obtained material is relied upon, particularly to support a negative procedural finding such as abuse of process, the parties may need to be informed and given an opportunity to respond.

The focus is therefore not on restricting judicial inquiry as such, but on ensuring that judicial inquiry remains compatible with an adversarial process.

Conclusion

B.K. v. Switzerland is a useful reminder that procedural fairness depends not only on who introduces evidence, but on whether parties are able to engage with the material that actually shapes the judgment.

The European Court's finding can be reduced to a straightforward proposition: a court should not rely adversely on information it has obtained independently while leaving the affected party unaware of, or unable to contest, that material.

In an era in which judges have ever greater access to external information and digital research tools, that principle is likely to become more rather than less important.

Judicial efficiency and factual verification may evolve. The adversarial character of a fair hearing remains a constraint on how those new possibilities are used.

Case

European Court of Human Rights, *B.K. v. Switzerland*, applications nos. 24268/21 and 55351/21, judgment of 22 October 2026.

Legal framework

European Convention on Human Rights, Article 6 §1.

European Convention on Human Rights, Article 35.

Status at the date of this note: the judgment has not yet become final and is subject to the conditions set out in Article 44 §2 of the Convention.

How to cite

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