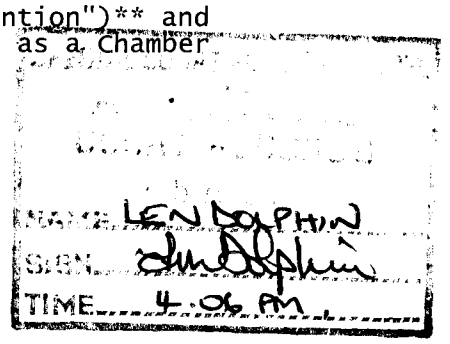
In the Letellier case*,

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,
Mr Thór Vilhjálmsson,
Mr F. Matscher,
Mr L.-E. Pettiti,
Mr R. Macdonald,
Mr R. Bernhardt,
Mr A. Spielmann,
Mr J. De Meyer,
Mr S.K. Martens,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 26 January and 24 May 1991,

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

Notes by the Registrar

* The case is numbered 29/1990/220/282. 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.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 21 May 1990, within the three-month period laid down by Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12369/86) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mrs Monique Letellier, on 21 August 1986.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision from the Court as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 5 §§ 3 and 4 (art. 5-3, art. 5-4) as regards the requirements of reasonable time and speediness.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicant stated that she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 30).

3. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 § 3 (b)). On 24 May 1990, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr F. Matscher, Mr J. Pinheiro Farinha, Mr R. Bernhardt, Mr A. Spielmann, Mr J. De Meyer and Mr S.K. Martens (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43). Subsequently Mr R. Macdonald, substitute judge, replaced Mr Pinheiro Farinha, who was unable to take part in the further consideration of the case (Rules 22 § 1 and 24 § 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 § 5) and, through the Registrar, consulted the Agent of the French Government ("the Government"), the Delegate of the Commission and the applicant's representative on the need for a written procedure (Rule 37 § 1). In accordance with the order made in consequence, the Registrar received the applicant's claims under Article 50 (art. 50) of the Convention on 28 June 1990 and the Government's memorial on 19 October. By a letter of 9 November the Deputy 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 16 November 1990 that the oral proceedings should open on 23 January 1991 (Rule 38).

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:

(a) for the Government

Mrs E. Belliard, Deputy Director of Legal Affairs,
Ministry of Foreign Affairs, Agent,
Mr B. Gain, Assistant Director of Human Rights,
Legal Affairs Directorate, Ministry of Foreign Affairs,
Miss M. Picard, magistrat, seconded to the Legal Affairs
Directorate, Ministry of Foreign Affairs,
Mrs M. Ingall-Montagnier, magistrat, seconded to the
Criminal Affairs and Pardons Directorate, Ministry of
Justice, Counsel;

(b) for the Commission

Mr A. Weitzel, Delegate;

(c) for the applicant

Ms D. Labadie, avocat, Counsel.

7. The Court heard addresses by Mrs Belliard for the Government, by Mr Weitzel for the Commission and by Ms Labadie for the applicant, as well as their answers to its questions. On the occasion of the hearing the representatives of the Government and of the applicant produced various documents.

AS TO THE FACTS

I. The particular circumstances of the case

8. Mrs Monique Merdy, née Letellier, a French national residing at La Varenne Saint-Hilaire (Val-de-Marne), took over a

bar-restaurant in March 1985. The mother of eight children from two marriages, she was separated from her second husband, Mr Merdy, a petrol pump attendant, and at the material time was living with a third man.

9. On 6 July 1985 Mr Merdy was killed by a shot fired from a car. A witness had taken down the registration number of the vehicle and on the same day the police detained Mr Gérard Moysan, who was found to be in possession of a pump-action shotgun. He admitted that he had fired the shot, but stated that he had acted on the applicant's instructions. He claimed that she had agreed to pay him, and one of his friends, Mr Michel Bredon - who also accused the applicant -, the sum of 40,000 French francs for killing her husband and that she had advanced him 2,000 francs for the purchase of the weapon.

Mrs Letellier denied these accusations although she admitted having seen the murder weapon, having declared in public that she wished to get rid of her husband and having given her agreement "without thinking too much about it" to Mr Moysan who had proposed to carry out the deed. She maintained, moreover, that she had given 2,000 francs to Mr Moysan, whom she described as "a poor kid", so that he could buy a motor car.

10. On 8 July 1985, in the course of the first examination, the investigating judge of the tribunal de grande instance (Regional Court) of Créteil charged the applicant with being an accessory to murder and remanded her in custody.

A. The investigation proceedings

1. The first application for release of 20 December 1985

11. On 20 December 1985 the applicant sought her release arguing that there was no serious evidence of her guilt. She claimed in addition that she possessed all the necessary guarantees that she would appear for trial: her home, the business, which she ran single-handed, and her eight children, some of whom were still dependent on her.

12. On 24 December 1985 the investigating judge ordered her release subject to court supervision; she gave the following grounds for her decision:

> "... at this stage of the proceedings detention is no longer necessary for the process of establishing the truth; ... although the accused provides guarantees that she will appear for trial which are sufficient to warrant her release, court supervision would seem appropriate."

He ordered the applicant not to go outside certain territorial limits without prior authorisation, to report to him once a week on a fixed day and at a fixed time, to appear before him when summoned, to comply with restrictions concerning her business activities and to refrain from receiving visits from or meeting four named persons and from entering into contact with them in any way whatsoever.

Thereupon the guardianship judge (juge des tutelles) returned custody of her four minor children to Mrs Letellier.

13. On appeal by the Créteil public prosecutor, the indictments division (chambre d'accusation) of the Paris Court of Appeal set aside the order on 22 January 1986, declaring that it would thereafter exercise sole jurisdiction on questions concerning the detention. It noted in particular as follows:

"...

The file contains ... considerable evidence suggesting that the accused was an accessory to murder, which is an exceptionally serious criminal offence having caused a major disturbance to public order, the gravity of which cannot diminish in the short lapse of time of six months.

The investigations are continuing and it is necessary to prevent any manoeuvre capable of impeding the establishment of the truth.

In addition, in view of the severity of the sentence to which she is liable at law, there are grounds for fearing that she may seek to evade the prosecution brought against her.

No measure of court supervision would be effective in these various respects.

Ultimately detention on remand remains the sole means of preventing pressure being brought to bear on the witnesses.

It is necessary in order to protect public order from the disturbance caused by the offence and to ensure that the accused remains at the disposal of the judicial authorities.

... ."

As a result, the applicant, who had been released on 24 December 1985, returned to prison on 22 January 1986.

14. At the hearing on 16 January 1986 Mrs Letellier had filed a defence memorial. In it she stressed that she had waited until the main phase of the investigation had been concluded before lodging her application for release; thus all the witnesses had been heard by the police or by the investigating judge, two series of confrontations with Mr Moysan had taken place and all the commissions rogatoires had been executed. She noted in addition that Article 144 et seq. of the Code of Criminal Procedure in no way regarded the gravity of the alleged offences as one of the conditions for placing and keeping an accused in pre-trial detention and that the parties seeking damages (parties civiles) had not filed any observations on learning of her release. She urged the indictments division to confirm the order of 24 December 1985 releasing her subject to court supervision and stated that she had no intention whatsoever of evading the prosecution, that she would comply scrupulously with the court supervision, that she could provide firm guarantees that she would appear in court and that further imprisonment would destroy, both financially and emotionally, a whole family, whose sole head she remained.

15. Mrs Letellier filed an appeal which the Criminal Division of the Court of Cassation dismissed on 21 April 1986 on the following grounds:

"...

In setting aside the order for the release subject to court supervision of Monique Merdy, née Letellier, accused of being an accessory to the murder of her husband, the indictments division, after having set out the facts and noted the existence of divergences between her statements and the various testimonies obtained, observed that the offence had caused a disturbance to public order which had not yet diminished, that, as the investigation was continuing, it was important to prevent any manoeuvre likely to impede the establishment of the truth and bring pressure

to bear on the witnesses, and that the severity of the sentence to which the accused was liable at law raised doubts as to whether she would appear for trial if she were released; the indictments division considered that no measure of court supervision could be effective in these various respects;

That being so the Court of Cassation is able to satisfy itself that the indictments division ordered the continued detention of Monique Merdy, née Letellier, by a decision stating specific grounds with reference to the particular circumstances and for cases provided for in Articles 144 and 145 of the Code of Criminal Procedure;

... ."

2. The second application for release of 24 January 1986

16. On 24 January 1986 the applicant again requested her release; the indictments division of the Paris Court of Appeal dismissed her application by a decision of 12 February 1986, similar to its earlier decision (see paragraph 13 above).

17. On an appeal by Mrs Letellier, the Court of Cassation set aside this decision on 13 May 1986 on the ground that the rights of the defence had been infringed as neither the applicant nor her counsel had been notified of the date of the hearing fixed for the examination of the application. It remitted the case to the indictments division of the Paris Court of Appeal, composed differently.

18. The latter indictments division dismissed the application on 17 September 1986. It considered that there were "in the light of the evidence ..., serious grounds for suspecting that the accused had been an accessory to murder". It took the view that "under these circumstances ..., the accused's detention [was] necessary, having regard to the seriousness of the offence ... and the length of the sentence [which she risked], in order to ensure that she remain[ed] at the disposal of the judicial authorities and to maintain public order".

It also dismissed the complaints based on a violation of Article 5 §§ 3 and 4 (art. 5-3, art. 5-4) of the Convention, stressing that these complaints were not based on any provision of the Code of Criminal Procedure and that it had taken its decision with due dispatch in accordance with that code.

19. At the hearing on 16 September 1986, Mrs Letellier had submitted a defence memorial. In it she requested the indictments division to order her release "because her application for release had not been heard within a reasonable time" within the meaning of Article 5 § 3 (art. 5-3) of the Convention and to take formal note that she did not object to being placed under court supervision.

20. On an appeal by Mrs Letellier, the Court of Cassation overturned this decision on 23 December 1986. It found that the Court of Appeal had not answered the submissions concerning the failure to respect the "reasonable time" referred to in Article 5 § 3 (art. 5-3).

21. On 17 March 1987 the indictments division of the Amiens Court of Appeal dismissed the application, which had been remitted to it, on the following grounds:

"...

... the charges are indeed based on sufficient, relevant

and objective evidence despite the accused's claim to the contrary;

Having regard to the complexity of the case and to the investigative measures which it necessitates, the time taken to conduct the investigation remains reasonable for the purposes of the European Convention, with reference to the dates on which Mrs Letellier was placed in detention and had her detention extended; the proceedings have never been neglected, as examination of the file shows;

Mrs Letellier's complaint that a reasonable time has been exceeded is also directed against the time taken to hear her application for release ... and she infers therefrom, by analogy with Articles 194 and 574-1 of the French Code of Criminal Procedure, that such a decision should have been taken within a period of between thirty days and three months;

However, none of the provisions of that code which are expressly applicable to the present dispute has been infringed and it must be recognised that the period of time which elapsed between the date of the application and that of the present judgment is only the inevitable result of the various appeals filed;

Finally the applicant's continued detention on remand remains necessary to preserve public order from the disturbance caused by such a - according to the present state of the investigation - decisive act of incitement to the murder of Mr Merdy; the extent of such disturbance, to the whole community, is not determined only on the basis of the reactions of the victim's entourage, contrary to what the defence claims ... . "

22. The applicant filed an appeal on points of law. She relied inter alia on Article 5 § 3 (art. 5-3) of the Convention, claiming that the indictments division had "failed to consider whether detention lasting more than twenty-two months, when the investigation [was] not yet concluded, exceeded a reasonable time". She also alleged violation of Article 5 § 4 (art. 5-4) inasmuch as the eighty-three days which had elapsed between the judgment of the Court of Cassation on 23 December 1986 and the judgment of the court to which the application was remitted could not be regarded as satisfying the requirement of speediness.

The Court of Cassation dismissed the appeal on 15 June 1987 on the following grounds:

"...

In order to reply to the accused's submissions based on the provisions of Article 5 § 3 (art. 5-3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which she had claimed had been infringed, the court to which the application was remitted found that, in relation to the dates on which Monique Letellier had been placed in detention on remand and had her detention extended, having regard to the complexity of the case and the necessary investigative measures, the proceedings had been conducted within a reasonable time within the meaning of the above-mentioned Convention; it found that the time which had elapsed between the date of her application for release of 24 January 1986 and that of the present judgment was only the inevitable result of the various appeals filed, cited in the judgment;

Moreover, in dismissing this application for release and

ordering the accused's continued detention on remand, the indictments division, after having referred to the grounds for suspicion against Monique Letellier, noted that the latter denied having been an accessory in any way although the declarations in turn of the two main witnesses conflict with the accused's version. According to the indictments division, it remains necessary to keep the accused in detention on remand in order to protect public order from the disturbance to which incitement to the murder of a husband gives rise;

In the light of the foregoing statements, the Court of Cassation is able to satisfy itself that the indictments division, before which no submissions based on the provisions of Article 5 § 4 (art. 5-4) of the European Convention were raised and which was not bound by the requirements of Article 145-1, sub-paragraph 3, of the Code of Criminal Procedure, which do not apply in proceedings concerning more serious criminal offences (matière criminelle), did, without infringing the provisions referred to in the defence submissions, give its ruling stating specific grounds with reference to the particular circumstances of the case, under the conditions and for the cases exhaustively listed in Articles 144 and 145 of the Code of Criminal Procedure;

... ."

3. The other applications for release

23. During the investigation, the applicant submitted six other applications for release: on 14 February, 21 March, 19 November and 15 December 1986 and then on 31 March and 5 August 1987. The indictments division of the Paris Court of Appeal dismissed them on 5 March, 10 April, 5 December and 23 December 1986 and on 10 April and 24 August 1987 respectively. It based its decisions on the following grounds:

Judgment of 5 March 1986

"...

The file thus contains considerable evidence suggesting that the accused was an accessory to murder, which is an exceptionally serious criminal offence having caused a major disturbance to public order, the gravity of which cannot diminish in the short lapse of time of seven months.

The investigations are continuing and it is necessary to prevent any manoeuvre capable of impeding the establishment of the truth.

In addition, in view of the severity of the sentence to which she is liable at law, there are grounds for fearing that she may seek to evade the prosecution brought against her.

No measure of court supervision would be effective in these various respects.

Ultimately, detention on remand remains the sole means of preventing pressure being brought to bear on the witnesses.

It is necessary to protect public order from the disturbance caused by the offence and to ensure that the accused remains at the disposal of the judicial authorities.

... ."

Judgments of 10 April and 5 December 1986

Identical to the preceding decision - itself very similar to that of 22 January 1986 (see paragraph 13 above) - except that the sixth paragraph was not included and that the first paragraph ended at the word "accessory".

Judgment of 23 December 1986

"...

In these circumstances there are strong indications of Mrs Merdy's guilt, indications which were moreover noted most recently by a judgment of this indictments division dated 5 December 1986.

The acts which Mrs Merdy is alleged to have carried out seriously disturbed public order and this disturbance persists. In addition there is a risk that, if she were to be freed, she would, in view of the severity of the sentence to which she is liable, seek to evade the criminal proceedings brought against her.

The constraints of court supervision would be inadequate in this instance.

The detention on remand of Mrs Merdy is necessary to preserve public order from the disturbance caused by the offence and to ensure that she remains at the disposal of the judicial authorities.

... ."

Judgment of 10 April 1987

"...

There are strong indications of Monique Letellier's guilt, having regard to the consistency of Mr Moysan's statements.

No new item of evidence has as yet been brought to the court's attention such as would be capable of altering the situation as regards Monique Letellier's incarceration.

The continuation of her detention on remand remains necessary to preserve public order from the serious disturbance caused by the offence and to ensure that she will appear for trial.

The constraints of court supervision would clearly be inadequate to attain these objectives.

... ."

Judgment of 24 August 1987

"...

In the present state of the proceedings, Monique Letellier is the subject of an order for the forwarding of documents to the principal public prosecutor dated 8 July 1987 made by the Créteil investigating judge, which gives grounds for supposing that the investigation is close to conclusion so that the competent court will be able to give judgment within a reasonable time.

In consequence the detention on remand is absolutely

necessary on account of the particularly serious disturbance caused by the offence.

It is to be feared that Mrs Letellier will seek to evade trial, having regard to the severity of the sentence which she risks.

It is consequently essential that the accused remains in detention in order to ensure that she is at the disposal of the trial court.

The guarantees of court supervision would clearly be inadequate to attain these objectives.

... ."

24. In the defence memorials which she submitted at the hearings on 23 December 1986, 3 March 1987 and 10 April 1987, Mrs Letellier stressed the contradictions in the investigation and the statements of the witnesses. Moreover, she contested the arguments put forward to justify the extension of her detention. She maintained that, once released, she would remain at the disposal of the judicial authorities and that public order would in no way be threatened; she would comply scrupulously with any court supervision; she would provide very firm guarantees for her appearance in court and her continued detention would destroy emotionally and financially a whole family, whose sole head she remained. She claimed the benefit of the presumption of innocence, a fundamental and inviolable principle of French law.

In her memorial of 3 March 1987, the applicant also invoked Article 5 § 3 (art. 5-3) of the Convention. She noted that "... in accordance with the case-law of the European Court of Human Rights, the grounds given in the decision(s) concerning the application(s) for release, on the one hand, taken together with the true facts indicated by [her] in her applications, on the other, [made] it possible [for her] to affirm that those grounds contained both in the judgment ... of 12 February 1986 and in the preceding judgment of 22 January 1986 and in the subsequent judgments [were] neither relevant nor sufficient". She added that the parties seeking damages, the victim's mother and sister, had not formulated any observations when she had filed her applications for release of December 1985, January, February, March, November and December 1986, whereas they had energetically opposed those of Mr Moysan; she reiterated this last argument in her memorial of 10 April 1987.

25. The case followed its course. On 26 May 1987 the investigating judge made an order terminating the investigation and transmitting the papers to the public prosecutor's office. On 1 July the Créteil public prosecutor lodged his final submissions calling for the file to be transmitted to the principal public prosecutor's office of the Court of Appeal. This was ordered by the investigating judge on 8 July.

B. The trial proceedings

26. On 26 August 1987 the indictments division committed the applicant for trial on a charge of

"having, in the course of 1985 in Val-de-Marne, being less than ten years ago, been an accessory to the premeditated murder of Bernard Merdy committed on 6 July 1985 by Gérard Moysan, inasmuch as she had by gifts, promises, threats, misuse of authority or power, incited the commission of this deed or given instructions for its commission".

27. On 9 September 1987 the Créteil public prosecutor's office

advised Mrs Letellier's counsel that "the case [was] liable to be heard during the first quarter of 1988". By a letter of 21 October 1987, however, the lawyer in question gave notice that he would be unavailable from 1 February to 15 March 1988 on account of his participation in another trial before the Assize Court of the Vienne département.

28. On 23 March 1988 the public prosecutor informed the accused's lawyer that the case would be heard on 9 and 10 May 1988. On 10 May 1988 the Val-de-Marne Assize Court sentenced Mrs Letellier to three years' imprisonment for being an accessory to murder. It sentenced Mr Moysan to fifteen years' imprisonment for murder and acquitted Mr Bredon.

The applicant did not file an appeal on points of law; she was released on 17 May 1988, the pre-trial detention being automatically deducted from the sentence (Article 24 of the Criminal Code).

II. The relevant legislation

29. The provisions of the Code of Criminal Procedure concerning detention on remand, as applicable at the material time, are as follows:

Article 144

> "In cases involving less serious criminal offences (matière correctionnelle), if the sentence risked is equal to or exceeds one year's imprisonment in cases of flagrante delicto, or two years' imprisonment in other cases, and if the constraints of court supervision are inadequate in regard to the functions set out in Article 137, the detention on remand may be ordered or continued:
>
> 1° where the detention on remand of the accused is the sole means of preserving evidence or material clues or of preventing either pressure being brought to bear on the witnesses or the victims, or collusion between the accused and accomplices;
>
> 2° where this detention is necessary to preserve public order from the disturbance caused by the offence or to protect the accused, to put an end to the offence or to prevent its repetition or to ensure that the accused remains at the disposal of the judicial authorities.
>
> ... ."

(An Act of 6 July 1989 expressly provided that Article 144 was to be applicable to more serious criminal cases (matière criminelle).)

Article 145

"In cases involving less serious criminal offences, an accused shall be placed in detention on remand by virtue of an order which may be made at any stage of the investigation and which must give specific reasons with reference to the particular circumstances of the case in relation to the provisions of Article 144; this order shall be notified orally to the accused who shall receive a full copy of it; receipt thereof shall be acknowleged by the accused's signature in the file of the proceedings.

As regards more serious criminal offences, detention is prescribed by warrant, without a prior order.

...

The investigating judge shall give his decision in chambers, after an adversarial hearing in the course of which he shall hear the submissions of the public prosecutor, then the observations of the accused and, if appropriate, of his counsel.

... ."

Article 148

"Whatever the classification of the offence, the accused or his lawyer may lodge at any time with the investigating judge an application for release, subject to the obligations laid down in the preceding Article [namely: the undertaking of the person concerned "to appear whenever his presence is required at the different stages of the procedure and to keep the investigating judge informed as to all his movements"].

The investigating judge shall communicate the file immediately to the public prosecutor for his submissions. He shall at the same time, by whatever means, inform the party seeking damages who may submit observations. ...

The investigating judge shall rule, by an order giving specific grounds under the conditions laid down in Article 145-1, not later than five days following the communication to the public prosecutor.

...

Where an order is made releasing the accused, it may be accompanied by an order placing him under court supervision.

... ."

Article 194

"...

[The indictments division] shall, when dealing with the question of detention, give its decision as speedily as possible and not later than thirty days [fifteen since 1 October 1988] after the appeal provided for in Article 186, failing which the accused shall automatically be released, except where verifications concerning his application have been ordered or where unforeseeable and insurmountable circumstances prevent the matter from being decided within the time-limit laid down in the present Article."

Article 567-2

"The criminal division hearing an appeal on a point of law against a judgment of the indictments division concerning detention on remand shall rule within three months of the file's reception at the Court of Cassation, failing which the accused shall automatically be released.

The appellant or his lawyer shall, on pain of having his application dismissed, file his memorial setting out the appeal submissions within one month of the file's reception, save where exceptionally the president of the criminal division has decided to extend the time-limit for a period of eight days. After the expiry of this time-limit, no new submission may be raised by him and memorials may no longer be filed.

... ."

PROCEEDINGS BEFORE THE COMMISSION

30. In her application of 21 August 1986 to the Commission (no.12369/86) Mrs Letellier complained that her detention on remand had exceeded the "reasonable time" provided for in Article 5 § 3 (art. 5-3) of the Convention. She alleged furthermore that the various courts which had in turn examined her application for release of 24 January 1986 had not ruled "speedily" as is required under Article 5 § 4 (art. 5-4).

31. The Commission declared the application admissible on 13 March 1989. In its report of 15 March 1990 (Article 31) (art. 31), it expressed the opinion that there had been a violation of paragraph 3 (unanimously) and paragraph 4 (seventeen votes to one) of Article 5 (art. 5-3, art. 5-4). The full text of the Commission's opinion and the dissenting opinion accompanying the report is reproduced as an annex to this judgment*.

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* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 207 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

32. At the hearing the Government confirmed the submission put forward in their memorial, in which they asked the Court to "hold that there [had] not been in this instance a violation of Article 5 §§ 3 and 4 (art. 5-3, art. 5-4) of the Convention".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 (art. 5-3)

33. The applicant claimed that the length of her detention on remand had violated Article 5 § 3 (art. 5-3), which is worded as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article (art. 5-1-c), ... shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

The Government contested this view. The Commission considered that after 22 January 1986 (see paragraph 13 above) the grounds for Mrs Letellier's detention had no longer been reasonable.

A. Period to be taken into consideration

34. The period to be taken into consideration began on 8 July 1985, the date on which the applicant was remanded in custody, and ended on 10 May 1988, with the judgment of the Assize Court, less the period, from 24 December 1985 to 22 January 1986, during which she was released subject to court supervision (see paragraph 12 above). It therefore lasted two years and nine months.

B. Reasonableness of the length of detention

35. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time.

To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (art. 5-3) of the Convention (see, inter alia, the Neumeister judgment of 27 June 1968, Series A no. 8, p. 37, §§ 4-5).

The persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the validity of the continued detention (see the Stögmüller judgment of 10 November 1969, Series A no. 9, p. 40, § 4), but, after a certain lapse of time, it no longer suffices; the Court must then establish whether the other grounds cited by the judicial authorities continue to justify the deprivation of liberty (ibid., and see the Wemhoff judgment of 27 June 1968, Series A no. 7, pp. 24-25, § 12, and the Ringeisen judgment of 16 July 1971, Series A no. 13, p. 42, § 104). Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see the Matznetter judgment of 10 November 1969, Series A no. 10, p. 34, § 12, and the B. v. Austria judgment of 28 March 1990, Series A no. 175, p. 16, § 42).

36. In order to justify their refusal to release Mrs Letellier, the indictments divisions of the Paris and Amiens Courts of Appeal stressed in particular that it was necessary to prevent her from bringing pressure to bear on the witnesses, that there was a risk of her absconding which had to be countered, that court supervision was not sufficient to achieve these objectives and that her release would gravely disturb public order.

1. The risk of pressure being brought to bear on the witnesses

37. The Government pointed out that the charges against Mrs Letellier were based essentially on the statements of Mr Moysan and Mr Bredon (see paragraph 9 above). The latter, who was examined by the investigating judge on 25 November 1985, could not, on account of his failure to appear, be confronted with the accused on 17 December 1985. The need to avoid pressure being brought to bear such as was liable to lead to changes in the statements of witnesses at confrontations which were envisaged was one of the grounds given in the decision of 22 January 1986 of the Paris indictments division (see paragraph 13 above).

38. According to the Commission, although such a fear was conceivable at the beginning of the investigation, it was no longer decisive after the numerous examinations of witnesses. Moreover, nothing showed that the applicant had engaged in intimidatory actions during her release subject to court supervision (see paragraphs 12-13 above).

39. The Court accepts that a genuine risk of pressure being brought to bear on the witnesses may have existed initially, but takes the view that it diminished and indeed disappeared with the passing of time. In fact, after 5 December 1986 the courts no longer referred to such a risk: only the decisions of the Paris indictments division of 22 January, 5 March, 10 April and 5 December 1986 (see paragraphs 13 and 23 above) regarded detention on remand as the sole means of countering it.

After 23 December 1986 in any event (see paragraph 23 above), the continued detention was therefore no longer justified under this head.

2. The danger of absconding

40. The various decisions of the Paris indictments division (see paragraphs 13, 16, 18 and 23 above) were based on the fear of the applicant's evading trial because of "the severity of the sentence to which she was liable at law" and on the need to ensure that she remained at the disposal of the judicial authorities.

41. The Commission observed that during the four weeks for which she had been released - from 24 December 1985 to 22 January 1986 - the applicant had complied with the obligations of court supervision and had not sought to abscond. To do so would, moreover, have been difficult for her, as the mother of minor children and the manager of a business representing her sole source of income. As the danger of absconding had not been apparent from the outset, the decisions given had contained inadequate statements of reasons in so far as they had mentioned no circumstance capable of establishing it.

42. The Government considered that there was indeed a danger of the accused's absconding. They referred to the severity of the sentence which Mrs Letellier risked and the evidence against her. They also put forward additional considerations which were not however invoked in the judicial decisions in question.

43. The Court points out that such a danger cannot be gauged solely on the basis of the severity of the sentence risked. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see, mutatis mutandis, the Neumeister judgment cited above, Series A no. 8, p. 39, § 10). In this case the decisions of the indictments divisions do not give the reasons why, notwithstanding the arguments put forward by the applicant in support of her applications for release, they considered the risk of her absconding to be decisive (see paragraphs 14, 19 and 24 above).

3. The inadequacy of court supervision

44. According to the applicant, court supervision would have made it possible to attain the objectives pursued. Furthermore, she had been under such supervision without any problems arising for nearly one month, from 24 December 1985 to 22 January 1986 (see paragraphs 12-13 above), and had declared her readiness to accept it on each occasion that she sought her release (see paragraphs 14, 19 and 24 above).

45. The Government considered on the other hand that court supervision would not have been sufficient to avert the consequences and risks of the alleged offence.

46. When the only remaining reason for continued detention is the fear that the accused will abscond and thereby subsequently avoid appearing for trial, he must be released if he is in a position to provide adequate guarantees to ensure that he will so appear, for example by lodging a security (see the Wemhoff judgment, cited above, Series A no. 7, p. 25, § 15).

The Court notes, in agreement with the Commission, that the indictments divisions did not establish that this was not the case in this instance.

4. The preservation of public order

47. The decisions of the Paris indictments division of 22 January, 5 March and 23 December 1986 and of 10 April and 24 August 1987 (see paragraphs 13 and 23 above), like that of the Amiens indictments division of 17 March 1987 (see paragraph 21 above), emphasized the need to protect public order from the disturbance caused by Mr Merdy's murder.

48. The applicant argued that disturbance to public order could not result from the mere commission of an offence.

49. According to the Commission, the danger of such a disturbance, which it understood to mean disturbance of public opinion, following the release of a suspect, cannot derive solely from the gravity of a crime or the charges pending against the person concerned. In order to determine whether there was a danger of this nature, it was in its view necessary to take account of other factors, such as the possible attitude and conduct of the accused once released; the French courts had not done this in the present case.

50. For the Government, on the other hand, the disturbance to public order is generated by the offence itself and the circumstances in which it has been perpetrated. Representing an irreparable attack on the person of a human being, any murder greatly disturbs the public order of a society concerned to guarantee human rights, of which respect for human life represents an essential value, as is shown by Article 2 (art. 2) of the Convention. The resulting disturbance is even more profound and lasting in the case of premeditated and organised murder. There were grave and corroborating indications to suggest that Mrs Letellier had conceived the scheme of murdering her husband and instructed third parties to carry it out in return for payment.

51. The Court accepts that, by reason of their particular gravity and public reaction to them, certain offences may give rise to a social disturbance capable of justifying pre-trial detention, at least for a time. In exceptional circumstances this factor may therefore be taken into account for the purposes of the Convention, in any event in so far as domestic law recognises - as in Article 144 of the Code of Criminal Procedure - the notion of disturbance to public order caused by an offence.

However, this ground can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the accused's release would actually disturb public order. In addition detention will continue to be legitimate only if public order remains actually threatened; its continuation cannot be used to anticipate a custodial sentence.

In this case, these conditions were not satisfied. The indictments divisions assessed the need to continue the deprivation of liberty from a purely abstract point of view, taking into consideration only the gravity of the offence. This was despite the fact that the applicant had stressed in her memorials of 16 January 1986 and of 3 March and 10 April 1987 that the mother and sister of the victim had not submitted any observations when she filed her applications for release, whereas they had energetically contested those filed by Mr Moysan (see paragraphs 14 and 24 in fine above); the French courts did not dispute this.

5. Conclusion

52. The Court therefore arrives at the conclusion that, at least

from 23 December 1986 (see paragraph 39 above), the contested detention ceased to be based on relevant and sufficient grounds.

The decision of 24 December 1985 to release the accused was taken by the judicial officer in the best position to know the evidence and to assess the circumstances and personality of Mrs Letellier; accordingly the indictments divisions ought in their subsequent judgments to have stated in a more clear and specific, not to say less stereotyped, manner why they considered it necessary to continue the pre-trial detention.

53. There has consequently been a violation of Article 5 § 3 (art. 5-3).

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 (art. 5-4)

54. The applicant also alleged a breach of the requirements of Article 5 § 4 (art. 5-4), according to which:

> "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."

She claimed that the final decision concerning her application for release of 24 January 1986, namely the Court of Cassation's dismissal on 15 June 1987 of her appeal against the decision of the indictments division of the Amiens Court of Appeal of 17 March 1987 (see paragraphs 16, 21 and 22 above), was not given "speedily". The Commission agreed.

55. The Government contested this view. They argued that the length of the lapse of time in question was to be explained by the large number of appeals filed by Mrs Letellier herself on procedural issues: in thirteen months and three weeks the indictments divisions gave three decisions and the Court of Cassation two; the time which it took for these decisions to be delivered was in no way excessive and could not be criticised because it was in fact the result of the systematic use of remedies available under French law.

56. The Court has certain doubts about the overall length of the examination of the second application for release, in particular before the indictments divisions called upon to rule after a previous decision had been quashed in the Court of Cassation; it should however be borne in mind that the applicant retained the right to submit a further application at any time. Indeed from 14 February 1986 to 5 August 1987 she lodged six other applications, which were all dealt with in periods of from eight to twenty days (see paragraph 23 above).

57. There has therefore been no violation of Article 5 § 4 (art. 5-4).

III. APPLICATION OF ARTICLE 50 (art. 50)

58. According to Article 50 (art. 50),

> "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, the applicant claimed compensation for damage and the reimbursement of costs.

A. Damage

59. Mrs Letellier sought in the first place 10,000 francs in respect of non-pecuniary damage and 435,000 francs for pecuniary damage; the latter amount was said to represent half the turnover which her bar-restaurant could have achieved between her arrest and the verdict of the assize court.

60. The Government did not perceive any causal connection between the alleged breaches and the pecuniary damage resulting for the applicant from her deprivation of liberty, which she would in any case have had to undergo once convicted. Furthermore, they considered that the finding of a violation would constitute sufficient reparation for the non-pecuniary damage.

61. The Delegate of the Commission expressed the view that she should be awarded compensation for non-pecuniary damage and, if appropriate, pecuniary damage, but did not put forward any figure.

62. The Court dismisses the application for pecuniary damage, because the pre-trial detention was deducted in its entirety from the sentence. As to non-pecuniary damage, the Court considers that the present judgment constitutes sufficient reparation.

B. Costs and expenses

63. For the costs and expenses referable to the proceedings before the Convention institutions, Mrs Letellier claimed 21,433 francs.

64. The Government did not express an opinion on this issue. The Delegate of the Commission left the quantum to be determined by the Court.

65. The amount claimed corresponds to the criteria laid down by the Court in its case-law and it accordingly considers it equitable to allow the applicant's claims under this head in their entirety.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 5 § 3 (art. 5-3);

2. Holds that there has been no violation of Article 5 § 4 (art. 5-4);

3. Holds that the respondent State is to pay to the applicant, in respect of costs and expenses, 21,433 (twenty-one thousand four hundred and thirty-three) French francs;

4. 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 26 June 1991.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar

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YAGCI AND SARGIN v. TURKEY (16419/90) [1995] ECHR 20 (8 June 1995)

In the case of Yagci and Sargin v. Turkey (1),

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 Rules of Court A (2), as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr R. Bernhardt,
Mr Thór Vilhjálmsson,
Mr F. Gölcüklü,
Mr L.-E. Pettiti,
Mr R. Macdonald,
Mr J. De Meyer,
Mr I. Foighel,
Mr B. Repik,

and also of Mr H. Petzold, Registrar,

Having deliberated in private on 27 October 1994 and 27 April and 23 May 1995,

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

Notes by the Registrar

1. The case is numbered 6/1994/453/533-534. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The third number indicates the case's position on the list of cases referred to the Court since its creation and the last two numbers indicate its position on the list of the corresponding originating applications to the Commission.

2. Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

PROCEDURE

1. The case was referred to the Court by the European

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Commission of Human Rights ("the Commission") on 11 March 1994, 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 two applications (nos. 16419/90 and 16426/90) against the Republic of Turkey lodged with the Commission under Article 25 (art. 25) by two Turkish nationals, Mr Nabi Yagci and Mr Nihat Sargin, on 6 February 1990.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Turkey recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 5 para. 3 and 6 para. 1 (art. 5-3, art. 6-1) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicants stated that they wished to take part in the proceedings and designated the lawyers who would represent them (Rule 30).

3. The Chamber to be constituted included ex officio Mr F. Gölcüklü, the elected judge of Turkish nationality (Article 43 of the Convention) (art. 43) and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 March 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr Thór Vilhjálmsson, Mr L.-E. Pettiti, Mr R. Macdonald, Mr J. De Meyer, Mr I. Foighel and Mr B. Repik (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Turkish Government ("the Government"), the applicants' lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicants' and the Government's memorials on 19 and 28 July 1994 respectively. The Delegate of the Commission did not submit any written observations.

5. On 8 November 1994 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the decision of the President, who had given the applicants and their lawyers leave to use the Turkish language (Rule 27 para. 3), the hearing took place in the Human Rights Building, Strasbourg, on 25 October 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr M. Özmen, Acting Agent,
Mrs D. Akçay, Adviser;

(b) for the Commission

Mrs J. Liddy, Delegate;

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(c) for the applicants

Mr E. Sansal,
Mr G. Dinç, avukatlar (lawyers), Counsel.

The Court heard addresses by them.

AS TO THE FACTS

I. Circumstances of the case

7. Mr Yagci, a journalist, and Mr Sargin, a doctor, were the general secretaries of the Turkish Workers' Party and the Turkish Communist Party respectively. At a press conference in Brussels in October 1987 they announced their intention of returning to Turkey to found the Turkish United Communist Party (TBKP) and develop its organisation and political action while staying within the law.

8. On arrival at Ankara on 16 November 1987, they were arrested as they alighted from the plane and taken into police custody. On 4 December the public prosecutor's office applied to the Ankara National Security Court to have them placed in detention pending trial. On 5 December a judge of that court made an order to that effect on the basis of strong evidence of guilt and after hearing the suspects. He charged them with leading an organisation whose aim was to establish the domination of a particular social class and disseminating propaganda to that end and with the intention of abolishing the rights guaranteed in the Constitution; inciting public hostility and hatred; and harming the reputation of the Republic of Turkey, its President and its Government (Articles 140, 141/1, 142/1-6, 142/3-6, 158, 159, 311 and 312 of the Turkish Criminal Code). These offences also amounted to an attack on the Government's authority and could be classified as serious crimes.

9. On 10 December 1987, counsel for the applicants appealed against that decision, which was, however, unanimously upheld by the National Security Court on 16 December.

10. On 11 March 1988 the public prosecutor's office brought proceedings against Mr Yagci and Mr Sargin and fourteen others.

11. The trial opened on 8 June 1988 and there were 48 hearings. The case file was made up of 40 different files. The defendants were represented by 400 lawyers, instructed before or during the course of the trial.

12. The first two hearings were taken up with a reading of the indictment, which ran to 229 pages. The court then devoted six hearings (from 4 July to 24 August 1988) to questioning the applicants and hearing addresses by them. This process, taken together with the content of the file and the nature of the offences which had given rise to the case were held by the court to justify keeping the defendants in detention.

13. At the hearing on 29 August 1988 one of the counsel for the applicants made the first application for their provisional release. He put forward the following arguments. His clients had been in detention for nine and a half months, including the period spent in police custody; although the nature of the offences with which Mr Yagci and Mr Sargin were charged might

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give rise to fears that they would abscond if released, that danger was ruled out in their case as they had publicly stated that they would be returning to Turkey to put their party on a lawful footing; and the differences of political opinion between the applicants and the regime in power could not be regarded as an attack on the authority of the Government and the State.

The court refused the application, holding that the reasons set out in the order of 5 December 1987 (see paragraph 8 above) remained valid.

14. On 21 September 1988 another of the applicants' representatives renewed the application, which was rejected by the court on the same day on the basis of the content of the file, the nature of the offences and the reasons set out in the relevant order.

15. On 14 October and 4 November 1988 the National Security Court ordered that Mr Yagci and Mr Sargin should be kept in detention, again on the basis of what was in the file. It also considered the organisational problems posed by the hearings on account of the large number of people wishing to attend them. Their lawyers had left the courtroom in order to have the security measures that applied during the trial lifted.

16. A fresh application for provisional release was lodged on 2 December 1988 by one of the applicants' lawyers. This placed particular emphasis on statements made by senior politicians and judges favouring changes to the legislation in order to permit the establishment of a communist party. At the end of the hearing the court dismissed the application, having regard to the content of the file.

The court dealt similarly with an identical application made by Mr Sargin on 30 December and with others made by counsel on 27 January, 22 February, 24 March, 21 April and 18 May 1989. The reasons for turning down the applications were always the same: the nature of the offences charged, the content of the file, the length of detention and the fact that the evidence remained unchanged.

17. At the eighteenth hearing, on 21 April 1989, the court ordered that the documents containing the evidence should be read out, as counsel for the applicants had requested.

18. In a further application for release made on 3 July 1989 counsel for the applicants relied on the Convention. They maintained that Articles 141 and 142 of the Criminal Code conflicted with the provisions of the Convention and were shortly to be repealed. The court dismissed the application, relying on the content of the file, the date of detention and the reasons for it.

19. A similar application by Mr Yagci on 2 August 1989 met with no greater success. He criticised the court for the repetitiveness of its orders and urged it to give more precise reasons for them. He also observed that the one-month intervals between hearings was contributing to prolonging his detention. The court ruled that there had been no development warranting his release.

20. On 25 August and 18 September 1989 the National Security Court refused two more such applications, and the reasons given

for its decisions remained unchanged.

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21. On 18 October 1989 one of the applicants' lawyers raised the concept of "reasonable time" referred to in Articles 5 para. 3 and 6 para. 1 (art. 5-3, art. 6-1) of the Convention and asserted that the length of his clients' detention infringed those provisions (art. 5-3, art. 6-1). He challenged, in particular, the repetitiveness of the reasons advanced by the court for refusing their applications for release. The court ordered that detention should continue, again relying on the nature of the offences and the content of the file.

22. The Convention's direct applicability in Turkish law was again emphasised in an application for release made at a hearing on 17 November 1989; but the National Security Court rejected this application and others made on 15 December 1989 and 6 April 1990.

On 8 February 1990 the court had looked into the possibility of joining the case with other trials, and on 9 March it had resumed the reading out of evidence. At both hearings it had considered of its own motion the issue of the applicants' continued detention.

23. Mr Yagci and Mr Sargin were eventually released provisionally on 4 May 1990, subject to the condition that they must not leave the country. In its unanimous decision the National Security Court took into account the legislative changes being prepared that might amend, to the defendants' advantage, the Acts on which their indictment had been based.

24. On 11 September 1990 the court dismissed an application to defer judgment that - on 11 July 1990 - had been made on the ground that it would be advisable to await the outcome of proceedings brought in the Constitutional Court concerning the dissolution of the Turkish Communist Party.

25. On 10 June 1991, following the entry into force of the Antiterrorist Act of 12 April 1991, which repealed Articles 141, 142 and 143 of the Criminal Code, the court decided to interrupt the reading out of the evidence relating to those provisions and to read out the evidence relating to the other charges. This process ended on 10 July during the forty-fifth hearing.

26. On 26 July 1991 the prosecutor made his closing address, and on 9 and 26 August the applicants put forward their defence.

27. On 9 October 1991 the Ankara National Security Court acquitted Mr Yagci and Mr Sargin on the charges brought against them under Articles 140, 141 and 142 of the Criminal Code as these had been repealed, and on charges of incitement to hatred made under Articles 311 and 312. It held that it had no jurisdiction in respect of the attack on the reputation of the Republic of Turkey, its President and its Government and referred the relevant charges to the Ankara Sixth Assize Court.

28. On 27 January 1992 that court held that it had no jurisdiction and referred the case to the Ankara Second Assize Court, which in a judgment of 9 July 1992 acquitted the applicants. No appeal on points of law was lodged against that decision, which became final on 16 July.

II. Relevant domestic law

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A. The Constitution

29. Article 19 para. 7 of the Constitution provides:

"Everyone who is deprived of his liberty for any reason whatsoever shall be entitled to take proceedings by which his case shall be decided speedily by a court and his release ordered if the detention is not lawful."

B. The Criminal Code

30. The following were the provisions of the Criminal Code as they applied at the material time:

Article 140

"It shall be an offence, punishable by not less than five years' imprisonment, for any citizen to disseminate and publish exaggeratedly untruthful information in a foreign country for a subversive purpose, or to engage in any activity contrary to the national interest in such a way that the activity in question diminishes the regard or respect in which Turkey is held abroad."

Article 141

"It shall be an offence, punishable by eight to fifteen years' imprisonment, to attempt to establish the domination of one social class over the others; to attempt to bring about the disappearance of any social class; or to attempt to set up associations in any manner and under any name whatsoever with the aim of overthrowing the country's fundamental social or economic order; or to set up, organise, lead or manage such associations or guide their activities.

Anyone organising, leading or managing several or all of the associations of this type shall be liable to the death penalty.

..."

Article 142

"It shall be an offence, punishable by five to ten years' imprisonment, to disseminate propaganda, in any manner and under any name whatsoever, with the aim of establishing the domination of one social class over the others, bringing about the disappearance of any social class, overthrowing the country's fundamental social or economic order, or totally destroying the State's political or legal system.

...

It shall be an offence, punishable by one to three years' imprisonment, to disseminate propaganda in any manner whatsoever for racist reasons or with the intention of wholly or partly abolishing the rights secured by the Constitution, or with the aim of weakening national sentiment.

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It shall be an offence publicly to defend the acts set out in the preceding two paragraphs, punishable by not more than five years' imprisonment in the case of those set out in the first and second paragraphs and by six months' to two years' imprisonment in the case of those set out in the third paragraph.

Where a person has committed the acts set out in the preceding paragraphs as a member of one or more of the organisations referred to in the sixth paragraph of Article 141 or with the persons referred to therein, his sentence shall be increased by not more than one-third.

Where the acts set out in the preceding paragraphs have been committed through publications, the sentence shall be increased by one-half."

Article 158

"It shall be an offence, punishable by not less than three years' imprisonment, to utter insults against the President of the Republic or to utter insults in his presence.

Where the insulting words are uttered in the absence of the President of the Republic, the offender shall be punished by one to three years' imprisonment. Even where the insult is veiled or allusive, the name of the President of the Republic not being clearly mentioned, it shall be deemed to have been uttered explicitly provided that there are presumptions leaving no doubt that it was directed against the person of the President of the Republic.

Where this offence is committed through the medium of the press, sentence shall be increased by one-third to one-half."

Article 159

"It shall be an offence, punishable by one to six years' imprisonment, publicly to insult or revile the nation, the Republic, the Grand National Assembly, the moral authority of the Government, ministries, the armed forces, the national defence and security forces or the moral authority of the judiciary.

Even where, in the commission of the offence set out in the first paragraph, the name of the insulted person is not openly mentioned, the insult shall be deemed to have been uttered explicitly against that person provided that there are presumptions leaving no doubt that it was directed against one of the persons referred to in the first paragraph.

It shall be an offence, punishable by fifteen days' to six months' imprisonment and a fine of 100 to 500 liras, to disparage in public the laws of the Turkish Republic or the decisions of the Grand National Assembly.

If an insult against the Turkish nation is uttered by a

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Turk in a foreign country, the applicable sentence shall be increased by one-third to one-half."

Article 311

"It shall be an offence, punishable as hereinafter, publicly to incite another to commit an offence:

three to five years' imprisonment in the case of an offence carrying a sentence greater than fixed-term imprisonment;

up to three years' imprisonment, depending on the nature of the offence, where the penalty provided for is fixed-term imprisonment;

a fine not exceeding 500 liras in all other cases.

Where incitement is by means of newspapers or magazines or other distributed printed material or by means of handwritten documents disseminated in duplicated form or as placards and posters displayed in public places, the terms of imprisonment laid down in the preceding paragraphs shall be doubled. Where the penalty laid down is a fine, the sum payable shall be 25 to 1,000 liras, depending on the nature of the offence.

In the cases provided for in the second and third paragraphs, the penalty may not exceed the maximum sentence for the offence incited.

Where the public incitement has led to commission of the offence or an attempt to commit it, the inciters shall be punished in the same way as principals."

Article 312

"It shall be an offence, punishable by three months' to one year's imprisonment and by a fine of 50 to 500 liras, publicly to praise or defend an act punishable by law as an offence or to urge the people to disobey the law, or to incite hatred between the different classes in society, in such a way as to endanger public safety.

The penalties for the acts set out in the preceding paragraph shall be doubled where they have been committed by means of a publication."

C. The Code of Criminal Procedure

31. The Code of Criminal Procedure contained the following provisions at the material time:

Article 112

"In the course of the preliminary investigation, for the duration of the accused's detention pending trial and at intervals of no more than thirty days, the magistrate's court shall examine, at the public prosecutor's request, whether or not it is necessary to prolong the accused's detention pending trial.

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The accused may also request, within the period prescribed by the foregoing paragraph, that the court examine the question of his detention pending trial.

During the trial of an accused detained pending trial, the court shall at each hearing or, if circumstances so require, between hearings decide of its own motion whether it is necessary to prolong his detention."

Article 219

"The trial shall continue without interruption in the presence of the parties.

..."

Article 222

"Trials may not be interrupted for more than eight days, except in cases of necessity. Where the accused are in detention pending trial, the interruption may not exceed thirty days, even where necessity exists."

Article 299

"... [A]pplications to set aside decisions and orders of this court [the Assize Court] shall be heard by the nearest other Assize Court ..."

PROCEEDINGS BEFORE THE COMMISSION

32. Mr Yagci and Mr Sargin applied to the Commission on 6 February 1990. They complained of the length of their detention pending trial (Article 5 para. 3 of the Convention) (art. 5-3) and of the criminal proceedings brought against them (Article 6 para. 1) (art. 6-1).

33. The Commission declared the applications (nos. 16419/90 and 16426/90) admissible on 10 July 1991. In its report of 30 November 1993 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a breach of those two provisions (art. 5-3, art. 6-1). The full text of the Commission's opinion is reproduced as an annex to this judgment (1).

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1. Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 319-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS BY THE GOVERNMENT TO THE COURT

34. In their memorial the Government asked the Court to

"allow [their] preliminary objections both as regards the Court's jurisdiction and as regards the admissibility of the case before the Commission and the Court itself.

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In the alternative ... to hold that Articles 5 para. 3 and 6 para. 1 (art. 5-3, art. 6-1) of the Convention ha[d] not been violated".

AS TO THE LAW

I. INTRODUCTORY OBSERVATION

35. The Government submitted that their arguments in the present case should be considered only if Turkey's recognition of the Court's compulsory jurisdiction were deemed valid in its entirety.

In the case of Loizidou v. Turkey the Government contended that Turkey's declaration of 22 January 1990 under Article 46 (art. 46) of the Convention would not be valid if the Court held the limitation ratione loci it contained to be invalid. The Court, in its judgment of 23 March 1995, while holding the limitation in question invalid, ruled that the said declaration contained a valid acceptance of its competence (Series A no. 310, p. 32, para. 98).

II. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

36. As their main submission the Government raised three objections to admissibility, based on lack of jurisdiction ratione temporis, failure to exhaust domestic remedies and loss of victim status.

1. Lack of jurisdiction ratione temporis

37. The Government contended that when, on 22 January 1990, Turkey had recognised the Court's compulsory jurisdiction over "matters raised in respect of facts, including judgments which are based on such facts which have occurred subsequent to" that date, its intention had been to remove from the ambit of the Court's review events that had occurred before the date on which the declaration made under Article 46 (art. 46) of the Convention was deposited. Moreover, in the present case the Court's jurisdiction ratione temporis was also excluded in respect of facts subsequent to 22 January 1990 which by their nature were merely "extensions of ones occurring before that date".

38. Mr Yagci and Mr Sargin submitted that the Court, in the same way as the Commission, had jurisdiction to deal with the case from the time it began, namely 16 November 1987, when they were arrested. Any other solution would result in different treatment of the same facts by the two Convention institutions.

39. The Delegate of the Commission argued that even if the Court held that it had jurisdiction from 22 January 1990, it would have to take into consideration the fact that on that date the applicants had been in detention pending trial, in connection with criminal proceedings, for more than two years and two months.

40. Having regard to the wording of the declaration Turkey made under Article 46 (art. 46) of the Convention, the Court considers that it cannot entertain complaints about events which occurred before 22 January 1990 and that its jurisdiction ratione temporis covers only the period after that date. However, when examining the complaints relating to Articles 5 para. 3

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and 6 para. 1 (art. 5-3, art. 6-1) of the Convention, it will take account of the state of the proceedings at the time when the above-mentioned declaration was deposited (see, among other authorities and mutatis mutandis, the Neumeister v. Austria judgment of 27 June 1968, Series A no. 8, p. 38, para. 7, and the Baggetta v. Italy judgment of 25 June 1987, Series A no. 119, p. 32, para. 20).

It therefore cannot accept the Government's argument that even facts subsequent to 22 January 1990 are excluded from its jurisdiction where they are merely extensions of an already existing situation. From the critical date onwards all the State's acts and omissions not only must conform to the Convention but are also undoubtedly subject to review by the Convention institutions.

2. Non-exhaustion of domestic remedies

41. The Government also pleaded - as they had done before the Commission - failure to exhaust domestic remedies, arguing that the applicants had in the first place neglected to apply to have set aside the decisions in which the Ankara National Security Court had ordered that they should continue to be kept in detention, a possibility afforded them, in particular, by Article 299 of the Code of Criminal Procedure.

Nor had Mr Yagci and Mr Sargin relied in the national proceedings on Article 19 para. 7 of the Constitution, which gave everyone in detention pending trial the right to be tried within a reasonable time.

Lastly, the applicants had not sought relief under Law no. 466 of 7 May 1964, which guaranteed persons who had been lawfully or unlawfully in detention the possibility of obtaining damages, irrespective of whether they had been acquitted, discharged without being brought to trial, or convicted.

42. As regards the first limb of the objection, the Court notes - like the Commission - that the remedy indicated by the Government must be sufficiently certain, in practice as well as in theory (see, mutatis mutandis, the Navarra v. France judgment of 23 November 1993, Series A no. 273-B, p. 27, para. 24). In 1958, however, the Court of Cassation twice held that Article 299 of the Code of Criminal Procedure, which was designed to enable applications to be made to have detention orders set aside, did not apply to orders prolonging detention. The Government did not cite any case-law to the contrary.

43. As regards Article 19 of the Constitution, the Court observes that the Government did not dispute - either before the Commission or at the hearing on 25 October 1994 - that that provision was largely modelled on Article 5 (art. 5) of the Convention and that the latter had been relied on by the applicants in the National Security Court three times (see paragraphs 18, 21 and 22 above).

44. As to the last limb of the objection, the Court points out that the applicants complained of the length of their detention pending trial, whereas Law no. 466 refers to an action for damages against the State in respect of detention undergone by persons who have been acquitted. Besides, the right to be tried within a reasonable time or released during the proceedings is not the same as the right to receive compensation for

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detention. Paragraph 3 of Article 5 (art. 5-3) of the Convention covers the former and paragraph 5 of Article 5 (art. 5-5) the latter. In conclusion, the objection is unfounded on this point also.

3. Loss of victim status

45. Lastly, the Government maintained that once they had been released on 4 May 1990, Mr Yagci and Mr Sargin could no longer claim to be victims of breaches of the Convention. They had received a kind of redress for the allegedly excessive length of their detention and the proceedings; the National Security Court had taken account of the major legislative reform that was under way in Turkey, which might result in the criminal provisions on which the applicants' committal for trial was based being amended to their advantage; and on the above-mentioned date, Mr Yagci's and Mr Sargin's acquittal seemed to be the only possible outcome of the proceedings in question.

46. The Court notes that the objection was not raised before the Commission, and it therefore dismisses it as there is estoppel.

III. ALLEGED VIOLATION OF ARTICLE 5 PARA. 3 (art. 5-3) OF THE CONVENTION

47. Mr Yagci and Mr Sargin complained of the length of their detention pending trial. They considered it contrary to Article 5 para. 3 (art. 5-3) of the Convention, which provides:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article (art. 5-1-c) shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

48. The Government contested this view, in the alternative, whereas the Commission accepted it.

A. Period to be taken into consideration

49. Having regard to the conclusion in paragraph 40 of this judgment, the Court can only consider the period of three months and twelve days which elapsed between 22 January 1990, when the declaration whereby Turkey recognised the Court's compulsory jurisdiction was deposited, and 4 May 1990, when the applicants were provisionally released (see paragraph 23 above). However, when determining whether the applicants' continued detention after 22 January 1990 was justified under Article 5 para. 3 (art. 5-3) of the Convention, it must take into account the fact that by that date the applicants, having been placed in detention on 16 November 1987 (see paragraph 8 above), had already been in custody for two years and two months.

B. Reasonableness of the length of detention

50. It falls in the first place to the national judicial authorities to ensure that, in a given case, the detention of an accused person pending trial does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of presumption of

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innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 para. 3 (art. 5-3) of the Convention (see, among other authorities, the Letellier v. France judgment of 26 June 1991, Series A no. 207, p. 18, para. 35).

The persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the validity of the continued detention, but, after a certain lapse of time, it no longer suffices; the Court must then establish whether the other grounds cited by the judicial authorities continue to justify the deprivation of liberty (ibid. and see the Wemhoff v. Germany judgment of 27 June 1968, Series A no. 7, pp. 24-25, para. 12, and the Ringeisen v. Austria judgment of 16 July 1971, Series A no. 13, p. 42, para. 104). Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see the Matznetter v. Austria judgment of 10 November 1969, Series A no. 10, p. 34, para. 12; the B. v. Austria judgment of 28 March 1990, Series A no. 175, p. 16, para. 42; and the Letellier judgment previously cited, p. 18, para. 35).

51. During the period covered by the Court's jurisdiction ratione temporis the Ankara National Security Court considered the question of the applicants' continued detention on three occasions - on 8 February and 9 March 1990 of its own motion and on 6 April on an application by the applicants (see paragraph 22 above).

As grounds for refusing to release Mr Yagci and Mr Sargin it cited the nature of the offences (classified as serious crimes, they gave rise in law to a presumption that there was a risk that the accused would abscond), "the state of the evidence" and the date of arrest, namely 16 November 1987 (see paragraph 8 above).

In the Government's submission, the applicants were kept in detention for as long as that was necessary to prevent them from absconding.

52. The Court points out that the danger of an accused's absconding cannot be gauged solely on the basis of the severity of the sentence risked. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see, mutatis mutandis, the Letellier judgment previously cited, p. 19, para. 43).

Mr Yagci and Mr Sargin had returned to Turkey of their own accord and with the specific aim of founding the Turkish United Communist Party (see paragraphs 7 and 13 above) and they could not be unaware that they would be prosecuted for this.

The National Security Court's orders confirming detention nearly always used an identical, not to say stereotyped, form of words, without in any way explaining why there was a danger of absconding.

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53. The expression "the state of the evidence" could be understood to mean the existence and persistence of serious indications of guilt. Although in general these may be relevant factors, in the present case they cannot on their own justify the continuation of the detention complained of (see the Kemmache v. France (nos. 1 and 2) judgment of 27 November 1991, Series A no. 218, p. 24, para. 50).

54. The third reason put forward by the National Security Court, namely the date of the applicants' arrest, does not stand up to scrutiny either, since no total period of detention is justified in itself, without there being relevant grounds under the Convention.

55. In the light of these considerations, the Court holds that the applicants' continued detention during the period in question contravened Article 5 para. 3 (art. 5-3).

That conclusion makes it unnecessary to look at the way in which the judicial authorities conducted the case.

IV. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

56. Mr Yagci and Mr Sargin further complained of the length of the criminal proceedings against them. They relied on Article 6 para. 1 (art. 6-1) of the Convention, which provides:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

57. The Government contested this view, again in the alternative, whereas the Commission accepted it.

A. Period to be taken into consideration

58. The proceedings began on 16 November 1987, when the applicants were arrested and taken into police custody, and ended not - as the Government argued - on 9 October 1991, when the applicants were acquitted of offences under Articles 141-43 (repealed on 12 April 1991 - see paragraphs 23, 25 and 27 above), 311 and 312 of the Criminal Code, but on 16 July 1992, when the Ankara Second Assize Court's judgment of 9 July in which the applicants were acquitted on the remaining charges became final (see paragraph 28 above).

However, having regard to the conclusion in paragraph 40 of this judgment, the Court can only consider the period of two years, five months and twenty-four days that elapsed between 22 January 1990, the date on which the declaration whereby Turkey recognised the Court's compulsory jurisdiction was deposited, and 16 July 1992. Nevertheless, it must take into account the fact that by the critical date the proceedings had already lasted more than two years.

B. Reasonableness of the length of proceedings

59. The reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's

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case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities (see, among many other precedents, the Kemmache (nos. 1 and 2) judgment previously cited, p. 27, para. 60).

1. Complexity of the case

60. The Government maintained that the case had been an extremely complex one as the evidence in the trial ran to forty files concerning sixteen accused, who were defended by a very large number of counsel. The Ankara National Security Court had not only to look at the evidence before it but also to read it out at the hearings, as requested by counsel for Mr Yagci and Mr Sargin so that the defence could make their observations. Ignoring that request would have resulted in the judgment's being quashed under Article 250 of the Code of Criminal Procedure.

61. The applicants contended that they had asked to have the documents in the case file read out because the prosecution had given no indication as to which charges the documents were supposed to prove. Furthermore, in view of the number of documents, Mr Sargin had himself suggested to the court that his counsel should, together with the representative of the public prosecutor's office, make a preliminary selection from them in order to speed up the trial; the court had refused. Nor had the case been especially complex, since it was a question simply of establishing that the party that they had wished to found was illegal at the time. Three months ought to have sufficed to complete the proceedings. The large number of counsel present had to be interpreted as a form of protest against political trials.

62. According to the Delegate of the Commission, even supposing that the case had been a complex one, the National Security Court's task of establishing the facts had been made easier as the applicants had never denied their aims and the file had contained documents concerning their political activities.

63. The Court notes merely that from 22 January 1990 the National Security Court held twenty hearings, sixteen of which were devoted almost entirely to reading out evidence. That process, even allowing for the quantity of documents, cannot be regarded as complex.

2. The applicants' conduct

64. The Government criticised the applicants' lawyers for having contributed to prolonging the proceedings by leaving the hearing room on several occasions in protest against the security measures imposed at the trial and by not complying with the time-limits for making observations on the evidence in the file. Furthermore, the Government regarded the application of 11 July 1990 to defer judgment (see paragraph 24 above) and the filing of numerous documents as having been delaying tactics.

65. The applicants said that they had always co-operated with the relevant courts.

66. The Court reiterates that Article 6 (art. 6) does not require a person charged with a criminal offence to co-operate actively with the judicial authorities (see, as the most recent authority, the Dobbertin v. France judgment of 25 February 1993, Series A no. 256-D, p. 117, para. 43). It notes, like the

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Commission, that the conduct of Mr Yagci and Mr Sargin and their counsel at the hearings does not seem to have displayed any determination to be obstructive. At all events, the applicants cannot be blamed for having taken full advantage of the resources afforded by national law in their defence. Even if the large number of counsel present at the hearings and their attitude to the security measures slowed down the proceedings to some extent, they are not factors that, taken alone, can explain the length of time in issue.

3. Conduct of the judicial authorities

67. In the Government's submission, the judicial authorities had always tried to bring the trial to a swift conclusion without, however, infringing the rights of the defence.

68. The applicants maintained that by claiming to be staging a "mass trial" of which they were the sole targets, the prosecution had been able to apply the special rules on the length of police custody, judicial investigation and proceedings. Furthermore, by holding an average of one hearing a month, the National Security Court had systematically disregarded Article 222 of the Code of Criminal Procedure, which prohibited any interruption of a trial for longer than eight days except in cases of necessity.

69. The Court does not in this instance have to speculate as to the motives of the prosecution at the National Security Court. It notes merely that between 22 January 1990 and 9 July 1992 that court held only twenty hearings in the case at regular intervals (less than thirty days), only one of which lasted for longer than half a day.

Moreover, after the Antiterrorist Act of 12 April 1991, repealing Articles 141-43 of the Criminal Code, had come into force (see paragraph 25 above), the National Security Court waited nearly six months before acquitting the applicants on the charges based on those provisions.

70. In conclusion, the length of the criminal proceedings in question contravened Article 6 para. 1 (art. 6-1).

V. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

71. Under Article 50 (art. 50) of the Convention,

"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."

A. Damages

72. Mr Yagci and Mr Sargin firstly claimed compensation to be calculated in European Currency Units and having regard to the date of actual payment by Turkey. They did not quantify it but said that the amount should be a large one in order to act as a

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deterrent. They relied on their suffering throughout detention and trial, the impossibility of carrying on their occupation and the slur on their honour.

73. The Government referred to their preliminary objections based on non-exhaustion of domestic remedies and loss of victim status (see paragraphs 41 and 45 above) and asked the Court to dismiss the claims.

74. The Delegate of the Commission did not make any submissions.

75. While reiterating that in the instant case its jurisdiction ratione temporis began on 22 January 1990, the Court considers, having regard to the particular circumstances of the case, that the applicants sustained non-pecuniary damage which the findings of violations in paragraphs 55 and 70 of this judgment cannot make good. It awards them each 30,000 French francs (FRF) under this head.

As to pecuniary damage, it is not apparent from the evidence that any was sustained.

B. Costs and fees

76. The applicants also sought reimbursement of the costs and expenses incurred in both sets of proceedings before the Convention institutions, which they estimated at FRF 38,000 in all. As to the fees of their counsel, they wished to leave it to the Court's discretion to assess the amount, having due regard to "the rates applied in the profession for similar services".

77. No observations were made on the matter by either the Government or the Commission.

78. On the basis of its case-law and the evidence before it, the Court considers the amount for costs and expenses to be reasonable. As to the fees, it decides to award FRF 30,000 for the two lawyers on an equitable basis.

C. Other claims

79. The applicants asked the Court, lastly, to request the respondent State to comply with the undertakings it made when ratifying the Convention. They suggested a number of remedies for the shortcomings in Turkish law.

In the first place, they considered it necessary to repeal section 31 of Law no. 3842 of 1 December 1992, which precluded application of the other provisions of the Law - limiting the length of detention - to offences over which the National Security Court continued to have jurisdiction.

Secondly, they deplored the lack of any procedure for speeding up the handling of cases and for providing compensation where a reasonable time had been exceeded.

Thirdly, they considered that Turkey should make greater efforts to ensure that the Strasbourg institutions' interpretations of the Convention's substantive provisions were known, especially in academic and judicial circles.

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80. The Government and the Delegate of the Commission did not make any submissions.

81. The Court notes that the Convention does not empower it to accede to such a request. It reiterates that it is for the State to choose the means to be used in its domestic legal system in order to comply with the provisions of the Convention or to redress the situation that has given rise to the violation of the Convention (see, mutatis mutandis, the Zanghì v. Italy judgment of 19 February 1991, Series A no. 194-C, p. 48, para. 26, and the Demicoli v. Malta judgment of 27 August 1991, Series A no. 210, p. 19, para. 45).

FOR THESE REASONS, THE COURT

1. Dismisses unanimously the preliminary objection of lack of jurisdiction ratione temporis;

2. Dismisses unanimously the objection that domestic remedies were not exhausted;

3. Dismisses unanimously the objection based on loss of victim status;

4. Holds by eight votes to one that there has been a breach of Article 5 para. 3 (art. 5-3) of the Convention on account of the length of the applicants' detention;

5. Holds by eight votes to one that there has been a breach of Article 6 para. 1 (art. 6-1) of the Convention on account of the length of the criminal proceedings;

6. Holds by eight votes to one that the respondent State is to pay each of the applicants, within three months, 30,000 (thirty thousand) French francs in respect of non-pecuniary damage;

7. Holds unanimously that the respondent State is to pay the two applicants jointly, within three months, 38,000 (thirty-eight thousand) French francs in respect of costs and expenses and 30,000 (thirty thousand) francs in respect of lawyers' fees;

8. Dismisses unanimously 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 8 June 1995.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of Rules of Court A, the dissenting opinion of Mr Gölcüklü is annexed to this judgment.

Initialled: R. R.

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Initialled: H. P.

DISSENTING OPINION OF JUDGE GÖLCÜKLÜ

(Translation)

1. I maintain the position I expressed in my dissenting opinion in the case of Loizidou v. Turkey (judgment of 23 March 1995, Series A no. 310) concerning the question of the validity of Turkey's declarations under Articles 25 and 46 (art. 25, art. 46) of the Convention.

2. Article 5 para. 3 (art. 5-3). When, on 22 January 1990, Turkey recognised the Court's jurisdiction over "matters raised in respect of facts, including judgments which are based on such facts which have occurred subsequent to" that date, its intention was to remove from the ambit of the Court's review events that had occurred before the date on which the declaration made under Article 46 (art. 46) of the Convention was deposited. The Court acknowledges this: "Having regard to the wording of the declaration Turkey made under Article 46 (art. 46) ..., the Court ... cannot entertain complaints about events which occurred before 22 January 1990 and ... its jurisdiction ratione temporis covers only the period after that date" (see paragraph 40). That is correct and is patently obvious in view of the explicit wording of Article 46 (art. 46).

3. However, the Court goes on to say: "... when examining the complaints relating to Articles 5 para. 3 and 6 para. 1 (art. 5-3, art. 6-1) of the Convention, [the Court] will take account of the state of the proceedings at the time when the above-mentioned declaration was deposited" (see paragraph 40).

4. This assertion raises the question of the practical consequences of this case-law, in other words the effect it has on the merits of the case under consideration.

5. The Turkish declaration was made on 22 January 1990. The applicants, who had been detained since 16 November 1987, lodged an application for their release for the first time on 29 August 1988, that is to say nine months and thirteen days after being deprived of their liberty (see paragraph 13); they were provisionally released on 4 May 1990 (see paragraph 23), only three months and eleven days after Turkey's declaration under Article 46 (art. 46) of the Convention - a relatively short period of time.

6. Article 6 para. 1 (art. 6-1). On 11 March 1988 the public prosecutor's office brought proceedings against the applicants; the trial opened on 8 June 1988. The case file was very bulky. The defendants were represented by 400 lawyers (see paragraphs 10-11).

7. At the time of the applicants' provisional release, the legislative changes that were already under way with the aim of repealing the Acts on which their indictment had been based were making progress (see paragraph 23).

Articles 141, 142 and 143 of the Turkish Criminal Code, under which Mr Yagci and Mr Sargin had been prosecuted, were repealed, and as a result the court decided, on 10 June 1991, to interrupt the reading out of the documents in the file relating to those provisions and to read out the evidence relating to the

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other charges. This process ended on 10 July 1991, one year, four months and eighteen days after the Turkish declaration in question. The proceedings could be considered as having really ended on that date, since what happened subsequently was a mere formality. And everything connected with the prosecution of the applicants ended on 9 July 1992. Even if the proceedings are regarded as having ended on the latter date, the trial lasted in all for two years, five months and seventeen days after Turkey's declaration under Article 46 (art. 46), which to my mind is not excessive for a trial on such a scale.

8. It should be noted that on 11 July 1990 the applicants themselves had asked the court to defer judgment, on the ground that it would be advisable to await the outcome of the proceedings brought in the Constitutional Court concerning the dissolution of the Turkish Communist Party (see paragraph 24).

9. Even if one regards as appropriate and consistent with the spirit of the Convention the Court's case-law to the effect that, when assessing reasonableness for the purposes of Articles 5 para. 3 and 6 para. 1 (art. 5-3, art. 6-1), it will take into account the period prior to the declaration made by Turkey, the rule will, in my opinion, affect the outcome only where the pointer of the scales is hovering on the line that separates "reasonable" from "unreasonable".

10. We must bear in mind the fact that the provisions of Article 25 and Article 46 (art. 25, art. 46) concerning time limitations on them are totally and completely independent of each other, and that a State may very well recognise the right of individual petition without recognising the Court's jurisdiction.

11. In the present case, the lines formed by the applicants' provisional release after three months and eleven days (Article 5 para. 3) (art. 5-3), and by the end of the proceedings, one year, four months and eighteen days (or, if preferred, two years, five months and seventeen days) after the declaration made by Turkey under Article 46 (art. 46), cannot be regarded as boundaries between "reasonable" and "unreasonable" if account is taken of the conditions in which this trial was conducted. Any other approach would mean confusing in an unacceptable way the provisions of Articles 25 and 46 (art. 25, art. 46) on limitations ratione temporis on the application of those Articles (art. 25, art. 46).

12. I take the view that neither by applying the "evolutive and progressive" method of interpretation it has adopted nor by applying the principle of implementing the Convention in a "useful" way, does the European Court of Human Rights have power to modify the provision of Article 46 (art. 46) concerning limitations ratione temporis to the point of rendering it ineffective or negating its existence.

13. I therefore reach the conclusion, contrary to the opinion of the majority, that Turkey has violated neither Article 5 para. 3 nor Article 6 para. 1 (art. 5-3, art. 6-1) of the Convention.

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In the case of Tomasi v. France*,

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,
Mr R. Bernhardt,
Mr F. Gölcüklü,
Mr F. Matscher,
Mr L.-E. Pettiti,
Mr C. Russo,
Mr A. Spielmann,
Mr J. De Meyer,
Mr J.M. Morenilla,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 27 February and 25 June 1992,

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

Notes by the Registrar

* The case is numbered 27/1991/279/350. 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.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission"), and then by the Government of the French Republic ("the Government"), on 8 March and 13 May 1991, 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. 12850/87) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr Félix Tomasi, on 10 March 1987.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Article 48 (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 Articles 3, 5 para. 3 and 6 para. 1 (art. 3, art. 5-3, art. 6-1).

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 lawyers

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who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 22 March 1991, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mrs D. Bindschedler-Robert, Mr F. Matscher, Mr J. Pinheiro Farinha, Sir Vincent Evans, Mr C. Russo, Mr R. Bernhardt and Mr J.M. Morenilla (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr F. Gölcüklü, Mr A. Spielmann and Mr N. Valticos, substitute judges, replaced Mrs Bindschedler-Robert, Mr Pinheiro Farinha and Sir Vincent Evans, who had resigned and whose successors at the Court had taken up their duties before the hearing (Rules 2 para. 3 and 22 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 lawyers on the organisation of the proceedure (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Government, the applicant and the Delegate of the Commission lodged their memorials on 5 November, 22 November and 13 December 1991, respectively.

On 9 July 1991 the Commission produced the documents in the proceedings before it, as the Registrar had requested it to do on the instructions of the President.

On 20 February 1992 one of the applicant's lawyers provided various documents at the request of the Registrar or with the Court's leave, as the case may be (Rule 37 para. 1 in fine).

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 February 1992. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr J.-P. Puissochet, Director of Legal Affairs, Ministry of Foreign Affairs, Agent,
Mr B. Gain, Head of the Human Rights Section, Department of Legal Affairs, Ministry of Foreign Affairs,
Miss M. Picard, magistrat, on secondment to the Department of Legal Affairs, Ministry of Foreign Affairs,
Mr R. Riera, Head of the Litigation and Legal Affairs Section, Department of Public Freedoms and Legal Affairs, Ministry of the Interior,
Mr J. Boulard, magistrat, on secondment to the Department of Criminal Affairs and Pardons, Ministry of Justice, Counsel;

(b) for the Commission

Mr H.G. Schermers, Delegate;

(c) for the applicant

Mr H. Leclerc, avocat,
Mr V. Stagnara, avocat, Counsel.

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The Court heard addresses by Mr Puissochet for the Government, by Mr Schermers for the Commission and by Mr Leclerc and Mr Stagnara for the applicant, as well as their answers to its questions. The applicant also addressed the Court.

On the same day the Government replied in writing to the questions put by the Court.

On 7 April one of the applicant's lawyers sent to the Registrar a letter concerning these questions, together with a document, with the Court's leave (Rule 37 para. 1 in fine).

6. At the deliberations on 25 June 1992 Mr J. De Meyer, substitute judge, who had attended the hearing, replaced Mr Valticos, who was prevented from taking part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

AS TO THE FACTS

7. Mr Félix Tomasi, a French national born in 1952, resides at Bastia (Haute-Corse). He is both a shopkeeper and a salaried accountant. At the time of his arrest, he was an active member of a Corsican political organisation, which put up candidates for the local elections and of which he was the treasurer.

8. On 23 March 1983 the police apprehended him in his shop and placed him in police custody until 25 March at Bastia central police station.

They suspected him of having taken part in an attack at Sorbo-Ocagnano (Haute-Corse) in the evening of 11 February 1982 against the rest centre of the Foreign Legion, which was unoccupied at that time of the year. Senior Corporal Rossi and Private Steinte, who, unarmed, were responsible for maintaining and guarding the centre, had been shot at and wounded, the former fatally and the latter very severely.

The attack had been carried out by a commando of several persons wearing balaclava helmets to conceal their features. The following day the "ex-FLNC" (the Corsican National Liberation Front), a movement seeking independence which had been dissolved by decree, had claimed responsibility for the attack and for twenty-four other bomb attacks which had been perpetrated the same night.

9. On 12 February 1982 the Bastia tribunal de grande instance had opened an investigation relating to charges of murder, attempted murder and the carrying of category 1 and category 4 weapons and ammunition. The same day the investigating judge had issued instructions for evidence to be taken on commission (commission rogatoire) to the Regional Criminal Investigation Department (SRPJ) of Ajaccio.

I. The criminal proceedings instituted against the applicant

A. The investigation proceedings
(25 March 1983 - 27 May 1986)

1. The proceedings conducted in Bastia
(25 March 1983 - 22 May 1985)

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(a) The investigative measures

i. Judge Pancrazi

10. On 25 March 1983 Mr Pancrazi, investigating judge at Bastia, charged Mr Tomasi and remanded him in custody following the latter's first appearance before him; he took the same measures in respect of a certain Mr Pieri. On 8 April he questioned Mr Tomasi on his alleged involvement in the offences.

11. He took evidence from witnesses on 28, 29 and 31 March, 14 and 29 April, 19 and 30 May and 2 June 1983.

On 19 May he questioned Mr Pieri and on 26 May another co-accused, Mr Moracchini, who had been held on remand since 24 March 1983. He organised confrontations between them on 30 and 31 May, and then on 1 June.

In addition he issued formal instructions for evidence to be taken on 26 May and 27 October 1983.

12. The recapitulatory examination of Mr Tomasi and Mr Pieri was conducted on 18 October 1983, and that of Mr Moracchini on 21 November.

On 26 October 1983 the investigating judge visited the scene of the crime.

ii. Judge Huber

13. The case was transferred to another investigating judge, Mr Huber, with effect from 2 January 1984.

Mr Pieri escaped from prison on 22 January 1984; he was recaptured on 1 July 1987.

Between 4 May 1984 and 10 January 1985, Mr Huber issued several orders for the inclusion of documents in the file and for their transmission to the prosecuting authorities.

On 24 January 1985 he rejected a request by the applicant for documents to be added to the file.

(b) The applications for release

14. Mr Tomasi submitted eleven applications for release.

15. The investigating judge rejected them by orders of 3 May, 14 June and 24 October 1983, 2 January 1984, 24 January, 20 March, 5 April, 18 April, 24 April, 3 May and 7 May 1985. On 6 June 1984 he issued instructions that the applicant be interviewed in Marseille on the conditions of his detention on remand. That interview took place on 18 June.

16. The applicant challenged the orders of 14 June 1983, 2 January 1984, 24 January and 20 March 1985, but the indictments division (chambre d'accusation) of the Bastia Court of Appeal upheld them on 7 July 1983, 26 June 1984, and 20 February and 17 April 1985.

In its judgment of 20 February 1985 it stated that it was necessary to continue the detention in order to avoid pressure being brought to bear on the witnesses, to prevent unlawful collusion between the accomplices, to protect public order (ordre public) from

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the prejudice caused by the offence and to ensure that Mr Tomasi remained at the disposal of the judicial authorities.

(c) The request for a transfer of jurisdiction

17. On 10 January 1985 the Bastia public prosecutor applied to the principal public prosecutor of that town for jurisdiction to be transferred on the ground of the climate of intimidation which reigned in the island.

18. On 25 March the principal public prosecutor at the Court of Cassation referred the matter to the Court of Cassation (criminal division), which gave its decision on 22 May; it transferred the case to the Bordeaux investigating judge "in the interests of the proper administration of justice" (Article 662 of the Code of Criminal Procedure).

2. The proceedings conducted in Bordeaux (22 May 1985 - 27 May 1986)

(a) The investigative measures

19. On 5 September 1985 Mr Nicod, investigating judge at Bordeaux, interviewed Mr Tomasi for the first and last time.

He questioned Mr Moracchini on 1 October 1985 and 13 January 1986, and Mr Satti - another co-accused - on 15 November 1985. In addition, he organised a confrontation between them on 13 December 1985.

20. On 14 January 1986 the investigating judge made an order transmitting the documents to the prosecuting authorities.

On 14 February 1986 the Bordeaux public prosecutor decided to forward the case-file to the principal public prosecutor's office.

From mid-March to mid-April 1986, the investigating judge added various documents to the file. On 17 April he made a further order transmitting the case-file to the prosecuting authorities, endorsed by the Bordeaux public prosecutor's office.

The case-file was forwarded to the principal public prosecutor's office by a decision dated 22 April 1986.

(b) The applications for release

21. Mr Tomasi submitted seven applications for his release.

The investigating judge dismissed his applications on 31 May, 7 June, 29 June, 13 August, 10 September and 8 October 1985 and 14 January 1986.

22. On appeals against various of the investigating judge's orders, the indictments division of the Bordeaux Court of Appeal upheld them by decisions of 3 September and 29 October 1985.

The first such decision referred to the particular gravity of the offences, the existence of "precise and convincing evidence", the risk of pressure being brought to bear and of unlawful collusion and the need to maintain public order and to ensure that the applicant appeared for trial.

The second decision contained the following reasoning:

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"It is plain that the offences of which the appellant is accused are particularly serious ones and profoundly prejudiced public order; without disregarding the pertinent observations of the accused's counsel concerning the length of the proceedings, it appears nevertheless that, as the investigating judge decided, Tomasi's continued detention is necessary to protect public order from the prejudice caused by the offences in question and also to avoid pressure being brought to bear or unlawful collusion and to ensure that the accused appears for trial;"

23. The two decisions gave rise to appeals on points of law by the applicant, which were dismissed by the criminal division of the Court of Cassation on 3 December 1985 and 22 January 1986.

The latter decision was based on the following reasons:

"In the light of the available evidence the Court of Cassation is satisfied that the indictments division ordered the continuation of the applicant's detention by a decision which set out the reasons on which it was based with reference to the particular circumstances and which was made under the conditions, and for cases, specified in Article 144 of the Code of Criminal Procedure; it may also be seen from the grounds of the decision that there is in this case, as is required under Article 5 para. 1 (c) (art. 5-1-c) of the Convention, ... reasonable suspicion that the accused has committed an offence; it follows moreover that, having regard to the specific circumstances of the case and the proceedings, the duration of the detention appears reasonable;"

B. The trial proceedings
(27 May 1986 - 22 October 1988)

1. Committal for trial

(a) The first committal

24. On 27 May 1986 the indictments division of the Bordeaux Court of Appeal indicted Mr Tomasi and Mr Pieri for murder with premeditation, attempted murder with premeditation and carrying category 1 and category 4 weapons, together with the corresponding ammunition; it committed them - as well as Mr Moracchini and Mr Satti - for trial at the Gironde assize court.

25. On 13 September 1986 the criminal division of the Court of Cassation allowed the appeal lodged by the applicant on 27 June 1986 on the ground that defence counsel had not been allowed to speak last at the hearing on 27 May.

It remitted the case to the indictments division of the Poitiers Court of Appeal, instructing that court to commit the accused for trial at the Gironde assize court if there were grounds for indicting him (Article 611 of the Code of Criminal Procedure).

(b) The second committal

26. On 9 December 1986 the Poitiers indictments division committed Mr Tomasi for trial at the Gironde assize court.

This decision did not give rise to an appeal on points of law.

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(c) The third committal

27. On 3 February 1987 the indictments division of the Bordeaux Court of Appeal ruled that it lacked jurisdiction to commit the applicant - but not his three co-accused - for trial at the specially constituted Gironde assize court, in other words the assize court sitting without a jury. The principal public prosecutor's office had requested it to apply the provisions of Law no. 86-1020 of 9 September 1986, according to which persons accused of acts of terrorism must be tried before such a judicial body.

28. On 7 May 1987 the criminal division of the Court of Cassation dismissed the appeal on this issue filed by the principal public prosecutor at the Bordeaux Court of Appeal.

29. On 16 June 1987 the Poitiers indictments division allowed an application lodged on 20 May 1987 by the prosecuting authority and committed the applicant for trial at the specially constituted Gironde assize court. It thereby acknowledged that the offences of which Mr Tomasi was accused were "related to an individual or collective undertaking aimed at seriously prejudicing public order by intimidation or terror" (Article 706-16 of the Code of Criminal Procedure).

30. On 24 September 1987 the criminal division of the Court of Cassation dismissed a further appeal by the applicant.

2. The applications for release

(a) The first application

31. By a decision of 27 May 1986 (see paragraph 24 above), the Bordeaux indictments division dismissed an application for release which Mr Tomasi had submitted on 6 May. It gave the following grounds:

> "The detention on remand, which started on 25 March 1983, has certainly lasted a very long time. However, the explanation for this lies in the systematic attitude adopted by the accused and the considerable difficulties encountered by the investigating judge. The period of detention, although long, does not in itself constitute a violation of the European Convention on Human Rights. On the contrary, in this particular case continued detention appears to be essential, given the exceptional gravity of the offences and the fact that Tomasi would not hesitate to abscond if he were released."

32. The applicant filed an appeal on points of law, but the criminal division of the Court of Cassation rejected the submission based on the violation of Article 5 para. 3 (art. 5-3) of the Convention. On this issue its judgment of 13 September 1986 stated as follows:

> "In the light of the available evidence the Court of Cassation is satisfied that the applicant's continued detention was properly ordered in accordance with the conditions laid down in Article 148-1 of the [Code of Criminal Procedure], by a decision setting out specific reasons, having regard to the features of the case as is required under Article 145 of that Code and for cases exhaustively listed in Article 144;

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> In addition the indictments division discussed the complexity and the length of the proceedings, carrying out an unfettered appraisal of the facts, which was sufficient and free of contradictions and from which it concluded that the length of the detention on remand had not exceeded a reasonable time [; it follows] that the submission must fail ..."

(b) The second application

33. Mr Tomasi submitted a new application for release on 19 January 1987.

By a decision of 3 February 1987 (see paragraph 27 above) the Bordeaux indictments division found that it lacked jurisdiction as the committal had been decided by the Poitiers indictments division.

(c) The third application

34. On 17 April 1987 the applicant lodged a further application for his release.

On 28 April the Bordeaux indictments division dismissed his application on the ground that the committal had been based on precise and detailed reasons, the offences were extremely serious ones and the detention was necessary to protect public order from the prejudice to which they had given rise.

(d) The fourth application

35. The applicant lodged a further application for release on 22 May 1987 with the indictments division of the Poitiers Court of Appeal, which dismissed it on 2 June for the following reasons:

> "A campaign of intimidation against the witnesses, policemen and judges has been waged in the course of the investigation;
>
> A mere recital ... of the offences which led to Tomasi being charged is sufficient, besides the fact that the said offences seriously prejudiced public order, to justify the accused's continued detention; there is a grave danger that if he were to be released he would enter into contact with members of the FLNC, who would no doubt be only too pleased to help him evade trial; it does not appear that his continued detention is, in the circumstances, such as to infringe the provisions of the Convention ..."

(e) The fifth application

36. On 6 November 1987 the applicant once again applied to the Bordeaux indictments division for his release.

On 13 November his application was dismissed on account of the extreme gravity of the alleged offences and the need to protect public order from the prejudice created thereby.

37. He then filed an appeal on points of law, which the criminal division of the Court of Cassation dismissed on 2 March 1988.

3. The trial

38. On 22 January 1988 the President of the Bordeaux Court of

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Appeal had directed that the session of the assize court was to open on 16 May 1988.

On 28 April the President decided to postpone the opening of the session until 17 October 1988, following an exchange of correspondence in March and April between the principal public prosecutor's office and counsel for Mr Tomasi and Mr Pieri.

On 15 July and 23 September he altered the composition of the trial court.

39. The trial took place from 17 to 22 October 1988. On that last date, the applicant was acquitted and immediately released. His three co-accused were given suspended sentences of one year's imprisonment for carrying or possession - as the case may be - of a category 1 weapon.

C. The compensation proceedings (18 April 1989 - 8 November 1991)

1. The application to the Compensation Board

40. On 18 April 1989 Mr Tomasi lodged a claim with the Compensation Board at the Court of Cassation under Article 149 of the Code of Criminal Procedure. According to this provision, "... compensation may be accorded to a person who has been held in detention on remand during proceedings terminated by a decision finding that he has no case to answer (non-lieu) or acquitting him, when that decision has become final, where such detention has caused him damage of a clearly exceptional and particularly serious nature".

2. The submissions of the principal public prosecutor at the Court of Cassation

41. On 5 June 1991 the principal public prosecutor (procureur général) at the Court of Cassation made the following submissions to the Compensation Board:

"...

IN THE MATTER OF THE DETENTION

During his detention, Tomasi lodged twenty applications for release, eleven applications to the Bastia investigating judge and nine to the investigating judge and the indictments division in Bordeaux.

Six judgments confirming decisions were given, four by the Bastia indictments division and two by that of Bordeaux.

Finally, two decisions of the criminal division of the Court of Cassation, of 17 October and 2 March 1988, dismissed Tomasi's appeals from the two decisions of the Bordeaux indictments division.

In their decisions rejecting the applications for release the investigating judges and the indictments division gave their reasons as being the exceptional gravity of the offences, the prejudice caused to public order, the need to ensure that the accused remained at the disposal of the judicial authorities and the risk of pressure being brought to bear on the witnesses.

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DISCUSSION

1. The length of the proceedings

. From 12 February 1982, the date on which the investigation was opened, to 25 March 1983, Tomasi was not yet implicated.

. From 25 March 1983, the date on which Tomasi was charged, to 18 October 1983, the date of his recapitulatory examination, the proceedings progressed at a normal pace and there were no delays.

. From November 1983 to May 1984 the proceedings slowed down and consisted of measures which could have been taken previously if the commissions rogatoires or the orders relating to them had been issued earlier.

Thus the result of the commission rogatoire concerning the victim's spectacles was not communicated until March 1984; it had not been issued until 27 October 1983 ..., whereas it could have been right at the beginning of the investigation.

Similarly the commission rogatoire giving instructions inter alia for an inquiry into the victims and into the Sorbo-Ocagnano camp and for a study and plans to be made of the premises was not issued until 26 May 1983 ...

The evidence obtained under that commission rogatoire was produced only in the course of the months of March and April 1984, which undeniably prolonged the proceedings.

. The lack of progress in the proceedings between May 1984 and January 1985 is incomprehensible. Thus nearly three months elapsed between the order of 4 May 1984 transmitting the papers to the prosecuting authority and the additional prosecution submissions of 31 July 1984 calling for a ballistic examination, which had already taken place. Yet it was not until the following 15 November, three and a half months later, that the investigating judge gave his order dismissing that request for an expert examination.

. From January 1985 to May 1985, the time taken for the transmission of documents to the indictments division and then the Court of Cassation and the return of the file to Bordeaux seems normal.

. On the other hand it was not until 5 September 1985, more than three months after the case had been referred to him, that the Bordeaux investigating judge carried out his first substantive investigative measure by interviewing Tomasi, after having dismissed the latter's applications for release on four occasions.

This lapse of time appears excessive in view of the fact that an investigating judge must give priority to a case concerning a person held in detention on remand; he has a duty to familiarise himself with it and proceed with the investigation as quickly as possible.

. From September 1985 to 14 January 1986 the interrogations and confrontations were continued at the rate of one investigative measure per month. Interviews held at shorter intervals would have made it possible to reduce the duration of the proceedings significantly.

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. From January 1986 to May 1986 the time taken to complete the file and transmit it to the assize court appears normal.

. On the other hand, from May 1986 to March/April 1988 there was a delay in the proceedings which can under no circumstances be justified by the appeals filed by the accused in pursuance of their statutory rights.

. Finally, it should be noted that the decision in the course of March and April 1988 to renounce holding the May session and to replace it by a session fixed for 17 October 1988 was taken by mutual agreement between the prosecuting authorities and the defence.

In conclusion, in view of the significance and the complexity of the case the investigation was bound to last longer than average. However, it could have been considerably shortened without the various delays noted above.

2. The necessity of keeping Tomasi in detention during the proceedings

Given the nature and the gravity of the offences and the results of the police investigation, Tomasi's detention was at first justified, up until his recapitulatory examination of 18 October 1983.

Moreover, until that date, Tomasi had not filed an application for release. However, by 18 October 1983 the witnesses had already been interviewed and the confrontations carried out.

The measures taken after that date, in particular the commissions rogatoires and the expert examinations, did not concern Tomasi directly, except the expert medical examinations ordered following his declarations regarding the conditions of his police custody, which clearly could not justify his continued detention.

It should moreover be stressed that between 18 October 1983, the date of the recapitulatory record, and 17 October 1988, the date on which the assize court session opened, in other words for five years, Tomasi was questioned only once, on 5 September 1985, and at his request.

The decisions rejecting his various applications for release were based on the exceptional gravity of the offences, the prejudice caused to public order, the necessity of ensuring that the accused remained at the disposal of the judicial authorities and the risk of pressure being brought to bear on the witnesses.

The gravity, even of an exceptional nature, of offences may constitute a ground for detention only if there is sufficient evidence against the person held.

In this case, charges had been preferred against Tomasi, who had always protested his innocence and had been on hunger strike several times, exclusively on the basis of Moracchini's statements, which were far from being as precise as they were claimed to be throughout the proceedings.

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In fact, according to various documents from the proceedings, and in particular:

- the report of the public prosecutor to the Bastia principal public prosecutor of 11 April 1983 ...,

- the memorandum from the SRPJ of Ajaccio of 8 June 1983 ...,

- the application by the Bastia investigating judge for a transfer of jurisdiction of 10 January 1985 ..., Moracchini stated that Tomasi had suggested that he take part in the `nuit bleue' (night of terrorist outrages) of 11 to 12 February 1982, and specifically carry out an attack against the Foreign Legion camp of Sorbo-Ocagnano.

Yet if all Moracchini's statements are read carefully it may be seen that although he did state that Tomasi had suggested that he participate in the `nuit bleue', at no time did he mention an attack against the Foreign Legion camp ...

Quite the contrary, Moracchini always claimed that he had learned of the attack for the first time the day after the events.

Thus, for example, in the course of his interrogation at his first appearance before the investigating judge ... Moracchini stated as follows:

'I was aware that Pieri knew Félix Tomasi. The latter had indeed suggested a few days earlier that I should take part in a `nuit bleue'. I had refused, but at no time did he say what attack I would have been expected to carry out. As for me, I only heard about the legionaries through the newspapers, on the morning of 12 February.'

Furthermore, it should be observed that all the witnesses who confirmed Moracchini's statements merely reported what he had told them. None of them was a direct witness to the events.

In addition, it does not seem that the release of Tomasi, who could provide sound guarantees that he would appear for trial and who had no previous convictions, could have represented a risk of pressure being brought to bear on witnesses or on Moracchini, a co-accused who was free.

In fact, Tomasi, like Pieri and Moracchini, was not remanded in custody until more than a year after the events and Pieri, implicated by the same witnesses as Tomasi, had escaped from prison on 22 January 1984 and remained free for three and a half years until his arrest on 1 July 1987, apparently without any pressure being brought to bear on the witnesses.

Finally, it should be noted that on 10 March 1987 Félix Tomasi lodged an application with the European Commission of Human Rights under Article 25 (art. 25) of the European Convention for the Protection of Human Rights, making the following complaints:

- excessive duration of his detention on remand (violation

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of Article 5 para. 3 of the Convention) (art. 5-3);

- inhuman and degrading treatment during his police custody (violation of Article 3 of the Convention) (art. 3);

- excessive duration of the investigation proceedings opened following a complaint accompanied by a civil claim (violation of Article 6 para. 1 of the Convention) (art. 6-1).

This application was the subject of a report by the European Commission of Human Rights adopted on 11 December 1990, in which the Commission declared the application admissible and expressed the opinion by twelve votes to two that there had been, in the case under review, a violation of Article 3 (art. 3) of the Convention, by thirteen votes to one, that there had been a violation of Article 6 para. 1 (art. 6-1) of the Convention and, unanimously, that there had been a violation of Article 5 para. 3 (art. 5-3) of the Convention.

IN CONCLUSION

In the light of the various considerations set out above, and the particularly distressing conditions of his detention, Félix Tomasi, who spent five years and nearly seven months in detention and in respect of whom the investigation produced only weak and insufficient evidence, suffered considerable damage on this account.

For all these reasons I call upon the Board to award appropriate compensation."

3. The decision of the Compensation Board

42. By a decision of 8 November 1991, which contained no statement of the reasons on which it was based, the Compensation Board awarded the applicant 300,000 French francs.

II. The criminal proceedings instituted by the applicant

A. The origin and the filing of the complaint

43. Mr Tomasi was apprehended on 23 March 1983 at 9 a.m. (see paragraph 8 above). He remained in police custody until 9 a.m. on 25 March, in other words forty-eight hours, Judge Pancrazi having granted the police an extension of twenty-four hours at 6 a.m. on 24 March.

44. During this period, the applicant:

(a) had been present at a search of his home on 23 March from 9.15 a.m. to 12.50 p.m.;

(b) had undergone several interrogations:

- on 23 March from 1.15 p.m. to 2.30 p.m., from 5.30 p.m. to 8 p.m. and from 8.40 p.m. to 10.15 p.m., a total of five hours and twenty minutes;

- on 24 March from 1.30 a.m. to 2 a.m., from 4 a.m. to 4.45 a.m., from 11 a.m. to 1 p.m., from 3.40 p.m. to 8 p.m. and from 8.30 p.m. to 9.20 p.m., a total of eight hours and twenty-five minutes;

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- on 25 March from 4.30 a.m. to 4.50 a.m., twenty minutes;

(c) had been examined on 24 March at 11 a.m. by a doctor, who had concluded that his state of health was compatible with the extension of the police custody.

The applicant signed the recapitulatory record drawn up at the end of his police custody, but refused to sign that of his last interrogation.

45. On 25 March 1983, when he first appeared before the investigating judge (see paragraph 10 above), he made the following statement:

> "I note the charges of which you have informed me. I am a declared member of the CCN [Cunsulta di i cumitati naziunalisti]. I am not a member of the FLNC. I will make a statement later in the presence of my lawyer, Mr Stagnara.
>
> I should like to add, however, that I was struck during my police custody by police-officers; I do not wish to give their names. I was not allowed any rest. I had to ask the doctor who visited me for something to eat because I was left without food and all I had to eat was one sandwich. This morning, I was left naked in front of an open window for two or three hours. I was then dressed and beaten up. This went on continuously throughout the police custody. I can show you bruises on my chest and a red patch under my left ear."

The judge had the words "seen, correct" entered at the end of this statement.

46. On 29 March 1983 Mr Tomasi laid a complaint against persons unknown together with an application to join the proceedings as a civil party (constitution de partie civile), "for assault committed by officials in the performance of their duties and abuse of an official position".

The following day the senior investigating judge ordered that the applicant lodge a deposit set at 1,200 francs and communicated the file to the public prosecutor's office.

B. The investigation proceedings (29 March 1983 - 6 February 1989)

1. The proceedings conducted at Bastia (29 March 1983 - 20 March 1985)

(a) The investigative measures

i. Judge Pancrazi

47. On 29 March Mr Pancrazi, the investigating judge, interviewed as a witness Dr Bereni, Senior Medical Officer at Bastia Prison. He stated as follows:

> "I am a medical officer in the Prison Service and I examined Charles Pieri on his arrival at the prison and Félix Tomasi, as I do with all the inmates.
>
> ...

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In Félix Tomasi's case, I observed behind the left ear a haematoma which had spread slightly towards the cheek. I noted slight superficial scratches on the chest. In addition, Tomasi reported pain in his head and neck, as well as in his legs, arms and back, but, as I have already stated, I was unable to find objective evidence to support these claims.

In both cases the injuries were very slight with no serious features and could not lead to incapacity for work."

48. On 25 March 1983 the same judge had instructed a Dr Rovere, an expert attached to the Bastia Court of Appeal, to carry out the following tasks:

"1. Effect an examination of the victim's injuries, illnesses or disabilities, describe them, specify their likely sequelae and give an opinion as to their causes;

2. Describe the extent of the incapacity and assess its probable duration."

The doctor, who had examined Mr Tomasi on 26 March 1983 at 12 noon in the prison, in the presence of the investigating judge, lodged his report on 30 March. The report stated as follows:

"III. CURRENT CONDITION

(1) Symptoms complained of
Mr Félix Tomasi complained of
. acute otalgia in the left ear
. acute parietal and bilateral cephalalgia
. slight back pain
. pains in the upper abdomen
No other symptom was complained of.

(2) Clinical examination

...

(a) General examination:

. Weight: 60kg; height: 1m65 (estimation)
. Blood pressure: 11,5/7
. Pulse rate: 84 beats to the minute
. Cardiopulmonary examination: normal.

(b) Cranio-facial segment:

- Two barely visible abrasions, one on the right temple and the other above the right eyebrow
- Small horizontal bruise to the upper part of the left eyelid, measuring 2cm in length, colour purplish-red
- Pains complained of on palpation of the right parietal region of the skull
- Conjunctival redness in both eyes (the patient states that he had this condition before his police custody), non-traumatic in origin
- Neurological examination:
. Pupils equal size, regular and contractile
. No nystagmus
. Romberg negative
. No asymmetry, no dysdiadochokinesis
. Tendon reflexes - normal

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. No deviation in the index finger test and the blind walk test
- Left ear:
. A dark-red-coloured bruise, warm and allegedly painful on palpation, in the helix and the anthelix
. The external auditory meatus and the eardrum show no sign of a traumatic injury.

(c) Cervical rachis:

. No apparent trace of traumatism
. Pressure on the processus spinosis of the cervical vertebrae C1 and C2 allegedly painful
. Unrestricted neck movement, cracking sounds in articulations could be heard on side movements of the head (commonplace after the age of thirty)
. No muscular contraction.

(d) Thorax and abdomen:

- Ecchymotic striae (vibices) located as follows:
. one at the level of the praesternum
. one at the level of the metasternum
. three others at the level of the epigastric region
. one at the level of the right hypochondrium.
These marks are red in colour, surrounded by a purplish halo, visible in non-artificial light and allegedly painful on palpation.
- No hepatomegaly
- No splenomegaly (enlarged spleen)
- Slight abdominal distension.

(e) Lumbar region:

. No apparent trace of traumatism
. No restriction on scope of trunk movement
. No paravertebral muscular contraction.

(f) Left arm:

On the upper third of the postero-internal face of the arm there is a bruise which is red in colour, with a purplish periphery in its lower part, measuring 8cm in length and 4cm in width, claimed to be painful on palpation.

Below this bruise, two others may be seen, of a circular shape, measuring 1.5cm in diameter, less highly coloured.

IV. DISCUSSION AND CONCLUSION

Mr Félix Tomasi has the following symptoms, as observed in the examination of 26 March 1983:

- Superficial bruising to the left upper eyelid, the front of the chest, in the epigastric region and that of the right hypochondrium, on the left arm and the left ear

- Two barely visible cutaneous abrasions on the right temple.

The red colouring of the bruises with a peripheral purple halo makes it possible to fix the date of their origin as between two and four days before the examination on

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26 March 1983.

The simultaneous presence of abrasions and bruises makes it possible to affirm that these injuries are traumatic in origin; however, biological tests could be carried out in order to eliminate another medical cause.

Their extent and form offer no indications of how they first occurred; they are thus consistent with Mr Tomasi's declarations but could equally have a different traumatic origin.

These injuries entail temporary total incapacity of three days."

49. On 24 June 1983 Judge Pancrazi interviewed Mr Tomasi as an accused. After the expert medical reports concerning the victims of the attack of 12 February 1982 had been read out to the applicant and his co-accused, the applicant stated:

"The injuries which were noted during the examinations made firstly by Dr Rovere and then by Drs Rocca and Ansaldi, were the result of the acts of Superintendent [D.], his deputy [A.] and some of the other officers of the criminal investigation department.

I was beaten for forty hours non-stop. I didn't have a moment's rest. I was left without food and drink.

A police-officer, whom I would be able to recognise, held a loaded pistol to my temple and to my mouth, to make me talk. I was spat upon in the face several times. I was left undressed for a part of the night, in an office, with the doors and windows open. It was in March.

I spent almost all the time in police custody standing, hands handcuffed behind the back. They knocked my head against the wall, hit me in the stomach using forearm blows and I was slapped and kicked continuously. When I fell to the ground I was kicked or slapped to make me get up.

They also threatened to kill me, Superintendent [D.] and officer [A.] told me that if I managed to get off they would kill me. They also said that they would kill my parents. They said that there had been an attack at Lumio where there had been a person injured and that the same thing would happen to my parents, that they would use explosives to kill them.

I would like to say in connection with the injuries to my left ear that, in addition to the bruise noted by Dr Rovere, I bled, to be more precise my ear was bleeding, as I realised when I put a cotton bud in my ear. This lasted for a fortnight. I asked if I could see a specialist and Dr Vellutini told me that I had a perforated eardrum. I also realised afterwards that I had a broken tooth. I was therefore not able to tell this to the experts.

Drs Rocca and Ansaldi stated that the bruise to the left upper eyelid could suggest the shape of spectacles; but my spectacles are worn on the nose and although they may leave marks on the nose, they cannot under any circumstances mark the upper part of the eye."

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ii. Judge N'Guyen

50. Following the lodging of Mr Tomasi's complaint and at the request of the public prosecutor, the President of the Bastia tribunal de grande instance appointed another investigating judge, Mr N'Guyen, on 2 June 1983.

Without waiting for the outcome of the application for an order designating the competent court (see paragraph 55 below), Mr N'Guyen had already appointed two experts of the Bastia Court of Appeal, Dr Rocca and Dr Ansaldi, who had examined the applicant on 29 March 1983 at the prison and submitted their report on 1 April. This document was worded as follows:

"SUMMARY OF THE FACTS:

The patient states as follows:

`On 23 and 24 March 1983 I was beaten up for a period of about thirty-six hours. I was repeatedly punched and kicked mainly in the abdomen, on the head and on the face.'

SYMPTOMS COMPLAINED OF AT THIS TIME:

The patient complains of the following symptoms:
- pain in the left ear;
- buzzing in the ears;
- headache;
- pain in the lumbar region;
- abdominal pain;
- [illegible].

CLINICAL EXAMINATION CARRIED OUT ON TODAY'S DATE

- Weight: 60kg
- Height: 1m65
- Blood pressure: 13/8
- Pulse: 72 beats a minute.

1. Examination of the face and the skull:

Mr Tomasi wears corrective lenses for myopia.

On examining him we noted the following:

- a slight bruising of the upper left eyelid, purplish in colour, 2cm in length;
- minor abrasions 3mm in diameter:
1 - at the level of the right temple,
2 - above the right eyebrow.

On continuing the examination of the face we observed:

- the area of the masticatory muscles was particularly sensitive on palpation, especially on the right;
- elsewhere, the ocular autokinesis was normal;
- the examination of the surface sensitivity of the face was normal;
- facial motility was normal.

Further examination revealed:

- pronounced, diffuse erythema in the auricle of the left ear;

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- auditory capacity appeared normal, tested by the ticking of a watch and whispering.

2. Thoraco-abdominal examination:

Examination showed:

- a number of cutaneous abrasions a few millimetres in diameter, located in the area of the right hypochondrium, the epigastrium, the right lower thoracic region and the left parasternal region, close to the metasternum;
- otherwise, pulmonary auscultation, palpation and percussion of thorax normal;
- likewise examination of the abdomen revealed a supple stomach, no pain;
- examination of the external genital organs showed no bruising, no haematoma, no scar, no trace of traumatism.

3. Examination of the upper members:

- On the left arm, postero-internal face, at the middle part of the arm, a bruise 8cm in length, 4cm in width, oval-shaped.

This bruise was a yellowish colour in the middle and greenish at the periphery.

- There were in addition two small bruises near to the first bruise, of a circular shape, about 4mm in diameter, also of a greenish colour.

4. Examination of the lower members:

Examination entirely normal.

5. Neurological examination:

- Romberg test: negative
- No deviation of index finger
- Muscular strength [illegible] intact
- Tendon reflexes present and symmetrical
- Sensitivity: normal
- Co-ordination: normal.

DISCUSSION AND CONCLUSION

After questioning and carrying out a full clinical examination of Mr Félix Tomasi, we noted the following injuries:

- two bruises, a small one on the left eyelid and a larger one on the left arm;

- in addition, there were abrasions spread out over the thoracic and parasternal region and on the left temple and right eyebrow. These abrasions were of minimal size.

The pains and buzzing in the ear require an opinion from an ear, nose and throat specialist.

The colouring of the bruises makes it possible to fix the date of the originating traumatism at between four and eight days previously.

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The bruise on the left arm could be the result of strong manual and digital pressure. The bruise to the left upper eyelid might suggest the shape of the upper frame of the spectacles worn by Mr Tomasi.

The cutaneous abrasions noted do not indicate a specific traumatic origin.

We did not find any scar, any burn mark, or any other injury capable of suggesting that acts of torture had been committed."

51. On 21 April 1983, at the investigating judge's request, the two doctors filed a further expert opinion. In this they concluded: "Mr Félix Tomasi qualifies for temporary total incapacity of two days".

52. On 1 July 1983 Judge N'Guyen interviewed the applicant in his capacity as a civil party in criminal proceedings. Mr Tomasi made the following statement:

"- ... I think that we arrived at the police station at around midday. They began to question me and typed the first record. I said that I was an active member of the CCN. They asked me if I knew why I was there. I replied that it was not the first time that they had detained members of the CCN.

- It was at that moment that they began to hit me; Superintendent [D.] slapped me repeatedly. Each time he came into the office he egged his men on. He said that they had to make me talk and that they had to use every means of doing so.

He hit me throughout the two days of police custody.

- His deputy [A.] also hit me. He used forearm blows to the stomach, saying that that left no mark. He pulled me by the hair and knocked my head against the wall.

There were others there but I don't know their names: there was a small, dark-haired man, who I think was called [G.]. He slapped me and punched me.

I can also give you the name of [L.] because he told me his name.

There were others too, but I cannot name them.

These men hit me continuously except when I was speaking. As soon as I stopped speaking they hit me.

- I'd like to make clear that I had my hands handcuffed behind my back and I had to remain standing fifty centimetres from the wall. That started at the beginning of the police custody. The body search was not carried out on the ground floor but on the second floor.

- I remember that there was also a man who was with [A.], of the same height, balding. He too hit me throughout the police custody. He took my head and knocked it against the wall.

- I had no rest the first night or the second.

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- I was questioned by about fifteen police-officers who took it in turns. Sometimes they were three, often they were between ten and fifteen. I spent almost forty-eight hours in the same office.

- I was taken down again on 25 March around six in the morning. Until then I had no rest, I had neither eaten nor had anything to drink.

- The first evening I asked for food and drink. The policemen gave me nothing. The following day, as I had asked to see a doctor, he came. I told him that I had been beaten continuously for more than twenty-four hours, that I had not eaten or drunk and that I was being dealt with by torturers. I made him note the marks of the blows to my stomach and face. He did not reply. He took my blood pressure. He told the policemen that I could stand up to it. Indeed I have written to the medical association on this point. When I told him that I had had nothing to eat, he looked at the policemen.

The policemen looked embarrassed and asked me what I wanted. I said that I would like a cup of coffee and a sandwich. They refused to give me the coffee and told me that I would have it if I talked. The sandwich was thrown into the dustbin. It was not until the following morning that the municipal police-officers (l'Urbaine) gave me three or four coffees with croissants and chocolate rolls. That is why when I arrived at the court house I was in a very agitated state.

- I should also like to say that police-officer [L.] took his pistol out of his belt, it was loaded, and held it to my temple and my mouth. He told me to talk. I replied that I couldn't make things up. He read me the records of the interrogations of the others. He told me that I should say the same thing.

- After that, [G.] spat at me about ten times in the face and slapped me.

- The torturer [D.] often came into the office and asked several times `you haven't undressed him yet?'

- At nightfall they took me into another office. It was still on the second floor but couldn't be seen into from outside. There I was completely stripped. This happened during the second night. I was completely naked, in my socks. [D.] arrived, he asked me why they hadn't taken off my socks. He slapped me and continued to question me like that with the doors and windows open. It was a cold March night. I repeat that in the room where I had been put I couldn't be seen from the outside. In the other room, they were careful to lower the metal blind when they turned the light on.

- At one moment I was allowed to sit down. That is when [B.] arrived. He took me by the shirt or jacket and pushed me. He had the handcuffs with which my hands were bound behind my back taken off and made me sit down. He told all the police-officers and the superintendent to leave. He asked me if I wanted anything. I told him that I would like to go to the lavatory and wash myself. He let me go; he

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then spoke to me for an hour. We spoke together as we are speaking today.

- That happened on the 24th at around 8 or 10 o'clock in the evening. [B.] left. They put back the handcuffs and continued to hit me.

- I should also say that my arms and legs were numb. I was sometimes hit so much that I fell to the ground. The policemen made me get up by kicking me and hitting my head against the wall.

- There were also threats to my family. They threatened to blow up the flat where my parents live. They told me about a woman from Lumio who had been blown up and who had been injured and said that they would do the same thing to my parents to kill them. They also told me that they would kill the families of my brother and my sister.

- Police-officer [L.] told me that he would make me close the shop. That it would be French people who would buy it. He told me that he would make all the Corsicans leave. He told me that he would also blow up the shop.

- They made threats against me too. The torturers threatened to kill me. They told me that they would take me to the Legion camp at Calvi and that they would leave me to the legionaries.

Many other things happened but in one hour it is impossible to recount everything that happened over forty hours.

[A.] called me a left-winger. He said that he was sure that I had voted for Mitterrand and that this was the result. They also said that they were about fifteen police-officers who were reliable and that I had better not lay a complaint. They told me that it wasn't the same for the municipal police-officers because there were sympathisers among them and they weren't sure of them.

I would like to say that if I am released, because I am innocent, if something happens to me, it won't be necessary to look any farther. They told me that if I were freed, they would deal with me."

53. By a letter of 3 July 1983 the applicant's lawyer requested the investigating judge to organise a confrontation between his client and the officers who had taken part in the interrogations; he also suggested that the judge should take evidence from the four persons who had been held in custody at the same time because "they could have heard or seen some of the ill-treatment inflicted at Bastia police station", as well as Dr Vellutini "who was asked to examine Mr Tomasi, who had complained of having problems with his ears". In addition, he asked that the record of the applicant's first appearance before Judge Pancrazi be included in the case-file.

54. The participants in the proceedings did not supply either the Commission or the Court with information regarding any investigative measures which may have been taken between 1 July 1983 and 15 January 1985.

(b) The applications for the competent court to be designated

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i. The first application

55. On 31 March 1983 the Bastia public prosecutor submitted an application to the criminal division of the Court of Cassation requesting that the "court responsible for the investigation or trial of the case" be designated. He was acting pursuant to Article 687 of the Code of Criminal Procedure, which concerns cases in which "an officer of the police investigation department is liable to be charged with a criminal offence, allegedly committed in the area in which he performs his duties, whether or not in the performance of those duties".

56. On 27 April 1983 the Court of Cassation rejected the application, because it did not specify either the names or the position of the persons who were liable to be prosecuted as a result of Mr Tomasi's complaint.

ii. The second application

57. On 15 January 1985 the Bastia public prosecutor again applied to the criminal division, seeking the designation of the competent court.

58. On 20 March 1985 the Court of Cassation gave its decision. It declared void the investigative measures carried out after 1 July 1983, the date on which the applicant as the civil party in criminal proceedings had identified the persons whom he accused.

In addition, it instructed the Bordeaux investigating judge to conduct the investigation into the applicant's complaint.

2. The Bordeaux proceedings
(20 March 1985 - 6 February 1989)

(a) Before the investigating judge
(23 April 1985 - 23 June 1987)

i. Judge Nicod

59. On 23 April 1985 the Bordeaux public prosecutor lodged an application for the opening of an investigation and the President of the Bordeaux tribunal de grande instance appointed an investigating judge, Mr Nicod.

60. The latter interviewed Mr Tomasi on only one occasion, on 5 September 1985.

On 24 September he added to the file the certified copies of several documents from the file opened in Bastia, in particular the records of the police custody and of the first appearance before the investigating judge as well as the expert medical reports.

By a letter addressed to the judge on 4 October, the applicant requested a confrontation with the police-officers who had interrogated him.

On 13 December 1985 and 13 January 1986 the investigating judge interviewed as witnesses persons who had been held in police custody on the same premises and at the same time as the applicant. Mr Moracchini stated that he had seen the applicant on the fourth day at Bastia Prison and had noted that he had marks on his abdomen and that an ear was running.

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ii. Judge Lebehot

61. Mr Nicod was appointed to a new post and the President of the Bordeaux tribunal de grande instance replaced him on 7 January 1987 by another judge, Mr Lebehot.

62. On 13 January 1987 the latter issued a commission rogatoire to the Director of the General Inspectorate of the National Police instructing it to undertake a thorough investigation.

Fifteen police-officers who had taken part in the arrests, searches and interrogations were interviewed between 3 and 24 February 1987. None of them admitted having assaulted the persons held in police custody and none of them was confronted with Mr Tomasi.

The results of the commission rogatoire reached the court on 6 March 1987.

63. On 23 June 1987 the investigating judge issued an order finding that there was no case to answer. He cited the same grounds as those set out in the submissions made the previous day by the Bordeaux public prosecutor:

> "... in view of the formal and precise denials by the officers concerned, the accusations made by the complainant, even if they are supported by a few objective medical observations, cannot in themselves constitute serious and concurring indications of guilt such as could justify one or several persons being charged."

(b) In the indictments division of the Court of Appeal (26 June 1987 - 12 July 1988)

64. By a letter of 26 June 1987 Mr Tomasi appealed from the order finding that there was no case to answer to the indictments division of the Bordeaux Court of Appeal. He complained among other things that there had been no confrontation with the police-officers and that the sequelae of his police custody had not been taken into account, in particular the fact that his eardrum had been perforated as was shown by subsequent examinations.

On 12 October he wrote to the President requesting that a confrontation be organised.

65. The indictments division gave its decision on 3 November 1987. It allowed the applicant's appeal and, before ruling on the merits, ordered further inquiries.

On 19 January 1988 the judge with responsibility for these inquiries issued a commission rogatoire to the Director of the General Inspectorate of the National Police. Three other police-officers were thus interviewed, as well as four persons - including Mr Filippi - who had been in police custody at the same time as Mr Tomasi, and the ear, nose and throat specialist - Dr Vellutini - who had examined him in April 1983.

On 28 January 1988 Mr Filippi stated that he had seen the applicant on the morning of 25 March 1983. Mr Tomasi's face had been "bruised and swollen", his hair had been "dishevelled", he had had "bruises on the chest, on the abdomen and under his right armpit"; he had complained that he had been "beaten all the time" and he had "even taken a tooth out of his pocket".

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On 25 February 1988 Dr Vellutini made the following statement:

"...

I carried out a medical examination of Mr Félix Tomasi as an outpatient at Bastia Hospital. I cannot specify the date, but it was in 1983. I treated him for an ear infection and possibly a perforated eardrum. I examined him once or twice, no more than that. I have already told this to the investigating Judge N'Guyen in his chambers. My examination was part of an ordinary consultation and I never issue a medical certificate in those circumstances; I merely treat the patients who are brought to me.

..."

On 18 April 1988 the judge submitted the results of the further inquiries.

66. On 12 July 1988 the indictments division upheld the order finding that there was no case to answer, on the following grounds:

"...

There is no doubt that Antoine Filippi, who was held in police custody at the same time as Tomasi, maintained that he had noticed in the hall of the police station that the latter's face had been `bruised and swollen' and that subsequently he had `personally seen that he had bruises on the chest, abdomen and under the right armpit';

His co-accused Joseph Moracchini had for his part stated that Tomasi `had all his chest grazed and that there was liquid running from an ear';

These statements add somewhat to the observations made by the investigating judge himself when Tomasi came to his chambers, namely the presence of bruises on his chest and a redness under the left ear, as well as those of the doctors designated at various stages in the proceedings;

During the police custody, on 24 March 1983 at 11 a.m., Doctor Gherardi examined Tomasi, who complained to him that he had been beaten, but he did not personally observe anything at that stage.

When he arrived at the prison, on 25 March 1983, Tomasi was seen, as part of the systematic check-ups of detainees, by the Senior Medical Officer, Dr Bereni, who noted the presence of a haematoma behind the left ear spreading slightly down towards the cheek and slight superficial scratches on the chest and took note that the applicant reported pain in the head, the neck, the legs, the arms and back, without any objective symptoms.

An expert, Dr Rovere, appointed by the investigating judge, examined Tomasi on 26 March 1983 at 12 noon and noted that he had superficial bruising on the left upper eyelid, on the front of the chest and in the epigastric region and that of the right hypochondrium, on the left arm and the left ear, as well as two cutaneous abrasions, barely visible, on the right temple; the expert stated that the red colouring of the bruises with a purple peripheral halo made

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it possible to fix the date of their occurrence as between two and four days before the examination and stressed that the fact that abrasions and bruises were present simultaneously gave grounds for affirming their traumatic nature but did not indicate the actual cause of the traumatism; he fixed at three days the duration of the temporary total incapacity.

The expert report which was entrusted to Dr Rocca and Dr Ansaldi, in connection with the investigation opened against persons unknown ... [see paragraph 46 above], revealed in the course of the examination carried out on 29 March the presence of two bruises, one a small one on the left eyelid capable of suggesting the shape of the upper frame of the applicant's spectacles and the other, larger, on the left arm, being possibly the result of very strong manual and digital pressure, as well as abrasions spread out about the thoracic and parasternal regions, on the right temple and the right eyebrow, which did not indicate any specific traumatic cause.

The possibility that the applicant had a perforated eardrum and a bleeding ear was not expressly confirmed by Dr Vellutini, an ear, nose and throat specialist, and was expressly denied by Drs Rovere and Bereni.

In any event a comparative study of the various observations made by several doctors and experts shortly after the supposed date of the acts of violence of which Tomasi complained showed that there was a real discrepancy between such violence (punches and kicks; forearm blows; head hit against the wall for nearly forty hours) and the slight nature of the traumatisms the origin of which is in dispute and cannot be determined.

The officers of the criminal investigation police concerned expressly deny the accusations.

Any confrontation appears at this stage pointless.

There is doubt as to the truth of Tomasi's accusations."

(c) Before the Court of Cassation
(21 July 1988 - 6 February 1989)

67. On 21 July 1988 Mr Tomasi filed an appeal on points of law which the criminal division of the Court of Cassation declared inadmissible on 6 February 1989 on the following grounds:

"On the basis of the grounds given in the contested judgment the Court of Cassation is satisfied that, in upholding the order in question, the indictments division, after having analysed the facts contained in the complaint, set out the grounds from which it inferred that there was not sufficient evidence against anyone of having committed the offence of assault by officials in the performance of their duties;

The appeal submission, in so far as it amounts to contesting the grounds of fact and law relied on by the judges, does not contain any of the complaints which, under Article 575 [of the Code of Criminal Procedure], a civil party in criminal proceedings is authorised to formulate in support of an appeal on points of law against a decision

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that there is no case to answer by the indictments division where no such appeal has been filed by the prosecuting authorities."

C. Subsequent developments

68. At Mr Tomasi's request, Dr Bereni, who was still the Chief Medical Officer at Bastia Prison, drew up a certificate on 4 July 1989, which he gave to the applicant in person "for the appropriate legal purposes". This document was worded as follows:

"I, the undersigned, Dr Jean Bereni, ... hereby certify that I examined the X-rays taken of Mr Tomasi at Toga Bastia Hospital on 2 April 1983.

The X-rays of the left temple show a thickening of the external auditory meatus with a perforation of the eardrum and the presence of a haematoma behind the eardrum.

The special-angle X-rays (Hitz) of the facial structure show, at the level of the bite of the upper left maxillary, the absence of the first molar.

Following these examinations Dr Vellutini, the senior consultant in the ear, nose and throat department, prescribed ear drops (Otipax) and I myself prescribed painkillers and sleeping-pills."

69. In reply to a letter of 26 August 1991, the Director of Bastia Regional Hospital communicated to the applicant the following details:

"(a) The additional investigations carried out have not revealed any new information of a medical nature in addition to that mentioned in my attestation of 4 July 1989 as regards your visit to Bastia General Hospital as an outpatient in the ear, nose and throat department, probably on 1 April 1983.

(b) At the time of your visit the former Toga Hospital did not have a structured system for dealing with outpatient consultations in the specialised departments; in these circumstances, in the case of mere visits without hospitalisation for an examination by a specialist, a medical record was not systematically drawn up (Dr Vellutini, who at the time was an ear, nose and throat specialist at the hospital, when contacted by my department in connection with your case, was not able to provide any further information which he might have remembered).

(c) In fact it is highly probable that the X-ray or X-rays concerning you were (as continues to be the practice in respect of detainees who are not hospitalised) immediately handed over to the persons accompanying you to be given to the medical service of the prison, without a copy being kept at the hospital.

(d) Moreover - in the unlikely event of medical documents concerning you having been filed - the move to new premises of the former hospital and the opening of a new hospital, in 1985, involved the multiple transportation of a considerable volume of files and documents, which could inevitably have resulted in the files being disturbed.

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(e) The search for documents concerning Mr Moracchini and Mr Pieri was likewise fruitless.

In any event I find it hard to see how an action which, as you suggest, might be brought against Bastia Hospital, either in the form of an application for an interlocutory injunction or on the merits, would make it possible to discover medical documents, whose presence in the archives is, to say the least, highly improbable and which have been the subject of thorough, albeit unsuccessful, searches."

PROCEEDINGS BEFORE THE COMMISSION

70. In his application of 10 March 1987 to the Commission (no. 12850/87), Mr Tomasi relied on Articles 3, 6 para. 1 and 5 para. 3 (art. 3, art. 6-1, art. 5-3) of the Convention. He claimed that during his police custody he had suffered inhuman and degrading treatment; he also criticised the length of the proceedings which he had brought in respect of such treatment; he maintained finally that his detention on remand had exceeded a "reasonable time".

71. The Commission declared the application admissible on 13 March 1990. In its report of 11 December 1990 (Article 31) (art. 31), it expressed the view that there had been a violation of Article 3 (art. 3) (twelve votes to two), Article 6 para. 1 (art. 6-1) (thirteen votes to one) and Article 5 para. 3 (art. 5-3) (unanimously). The full text of its opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment*.

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* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 241-A of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

FINAL SUBMISSIONS TO THE COURT

72. In their memorial, the Government asked the Court "to find that in the present case there [had] been no violation of Articles 5 para. 3, 3 and 6 para. 1 (art. 5-3, art. 3, art. 6-1) of the Convention".

73. For their part, the applicant's lawyers requested the Court to

"State that Mr Tomasi was the victim, during his custody on police premises, of inhuman and degrading treatment in violation of the provisions of Article 3 (art. 3) of the Convention.

State that the proceedings brought by Mr Tomasi to obtain compensation for the damage suffered as a result of such treatment were not conducted within a reasonable time, in violation of the provisions of Article 6 para. 1 (art. 6-1) of the Convention.

State that, in detention on remand, Mr Tomasi was not tried within a reasonable time or released pending trial, in violation of the provisions of Article 5 para. 3 (art. 5-3) of the Convention.

Set at 2,376,588 francs the just satisfaction for the

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consequences suffered by Félix Tomasi as a result of the violation by the French authorities of Article 5 para. 3 (art. 5-3) of the Convention.

Set at 500,000 francs the just satisfaction for the consequences suffered by Félix Tomasi as a result of the violations by the French authorities of Articles 3 and 6 para. 1 (art. 3, art. 6-1) of the Convention.

State that the French Republic shall be liable for the costs, fees and expenses of the present proceedings, including defence fees calculated at 237,200 francs.

With all due reservations."

74. In his written observations the Delegate of the Commission invited the Court to reject as inadmissible the Government's objection under Article 26 (art. 26) of the Convention.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 PARA. 3 (art. 5-3)

75. According to the applicant, the length of his detention on remand infringed Article 5 para. 3 (art. 5-3), which is worded as follows:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article (art. 5-1-c), ... shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Government's preliminary objections

76. The Government raised two objections to the application's admissibility; they contended firstly that the applicant had failed to exhaust domestic remedies and secondly that he had lost the status of victim.

77. Referring to its settled case-law (see, as the most recent authority, the Drozd and Janousek v. France and Spain judgment of 26 June 1992, Series A no. 240, pp. 31-32, para. 100), the Court finds that it has jurisdiction to examine these objections, despite the Commission's view to the contrary in respect of the first objection.

1. Objection based on the failure to exhaust domestic remedies

78. The Government stressed, as they had done before the Commission, that Mr Tomasi had lodged his application with the Commission on 10 March 1987, and therefore even before having submitted a claim to the Compensation Board at the Court of Cassation, which he did on 18 April 1989 (see paragraphs 1 and 40 above). Since then, the compensation awarded on 8 November 1991 (see paragraph 42 above) had rendered the complaint made under Article 5 para. 3 (art. 5-3) of the Convention devoid of purpose.

79. Like the applicant and the Delegate of the Commission, the Court notes in the first place that the right to secure the ending of a deprivation of liberty is to be distinguished from the right to receive compensation for such deprivation. It further observes that Article 149 of the Code of Criminal Procedure made the award of

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compensation subject to the fulfilment of specific conditions not required under Article 5 para. 3 (art. 5-3): namely the adoption of "a decision finding that [the accused] has no case to answer or acquitting him" and the existence of "damage of a clearly exceptional and particularly serious nature" (see paragraph 40 above). Finally, Mr Tomasi lodged his application in Strasbourg after four years spent in detention.

The objection must therefore be dismissed.

2. Objection based on the loss of the status of victim

80. In the Government's contention the applicant has lost the status of "victim" within the meaning of Article 25 para. 1 (art. 25-1) of the Convention. By its decision of 8 November 1991 awarding him 300,000 French francs, the Compensation Board had acknowledged that a "reasonable time" had been exceeded and had made good the resulting damage.

The applicant disputed this view.

81. The Court notes at the outset that this submission was made for the first time before it at the hearing on 25 February 1992 and not within the time-limits laid down in Rule 48 para. 1 of the Rules of Court. It observes nevertheless that the Government filed their memorial before the adoption of the Compensation Board's decision, so that their submission cannot be regarded as out of time.

On the other hand, it is open to the same objections as the plea based on the failure to exhaust domestic remedies. It is therefore unfounded.

B. Merits of the complaint

82. Mr Tomasi considered the length of his detention on remand excessive; the Government denied this, but the Commission agreed with him.

83. The period to be taken into consideration began on 23 March 1983, the date of the applicant's arrest, and ended on 22 October 1988 with his release following the delivery of the Gironde assize court's judgment acquitting him (see paragraphs 8 and 39 above). It therefore lasted five years and seven months.

84. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the circumstances arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his applications for release and his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 para. 3 (art. 5-3).

The persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the validity of the continued detention, but, after a certain lapse of time, it no longer suffices; the Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds

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were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see, as the most recent authority, the Clooth v. Belgium judgment of 12 December 1991, Series A no. 225, p. 14, para. 36).

1. The grounds for continuing the detention

85. In order to reject Mr Tomasi's applications for release, the investigating authorities put forward - separately or together - four main grounds: the seriousness of the alleged offences; the protection of public order; the need to prevent pressure being brought to bear on the witnesses or to avoid collusion between the co-accused; and the danger of the applicant's absconding.

(a) Seriousness of the alleged offences

86. The investigating judges and the indictments divisions stressed the particular or exceptional gravity of the offences of which the applicant was accused (see paragraphs 22, 31, 34, 35 and 36 above).

87. The applicant did not deny this, but he regarded it as not sufficient to justify pre-trial detention over such a long period of time, in the absence of grounds for suspecting him other than his membership of a nationalist movement. His period of detention corresponded to the term of imprisonment that would actually be served by a person sentenced to more than ten years' imprisonment.

88. The Government emphasised the consistent nature of the statements of a co-accused, Mr Moracchini, implicating Mr Tomasi in the preparation and organisation of the attack.

89. The existence and persistence of serious indications of the guilt of the person concerned undoubtedly constitute relevant factors, but the Court considers, like the Commission, that they cannot alone justify such a long period of pre-trial detention.

(b) Protection of public order

90. The majority of the courts in question expressed forcefully, and in very similar terms, the need to protect public order from the prejudice caused by the offences of which the applicant was accused (see paragraphs 16, 22, 34, 35 and 36 above).

The Government endorsed this reasoning, which was challenged by the applicant and the Commission.

91. The Court accepts that, by reason of their particular gravity and public reaction to them, certain offences may give rise to public disquiet capable of justifying pre-trial detention, at least for a time.

In exceptional circumstances - and subject, obviously, to there being sufficient evidence (see paragraph 84 above) - this factor may therefore be taken into account for the purposes of the Convention, in any event in so far as domestic law recognises - as in Article 144 of the French Code of Criminal Procedure - the notion of prejudice to public order caused by an offence. However, this ground can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the accused's release would actually prejudice public order. In addition, detention will continue to be legitimate only if public order remains actually threatened; its continuation cannot be used to anticipate a

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custodial sentence (see, as the most recent authority, the Kemmache v. France judgment of 27 November 1991, Series A no. 218, p. 25, para. 52).

In the present case, the investigating judges and the indictments divisions assessed the need to continue the deprivation of liberty from a purely abstract point of view, merely stressing the gravity of the offences (see, mutatis mutandis, the same judgment, p. 25, para. 52) or noting their effects. However, the attack against the Foreign Legion rest centre was a premeditated act of terrorism, responsibility for which was claimed by a clandestine organisation which advocated armed struggle. It had resulted in the death of one man and very serious injuries to another. It is therefore reasonable to assume that there was a risk of prejudice to public order at the beginning, but it must have disappeared after a certain time.

(c) Risk of pressure being brought to bear on the witnesses and of collusion between the co-accused

92. Several judicial decisions adopted in this case were based on the risk of pressure being brought to bear on the witnesses - the Poitiers indictments division even referred to a "campaign of intimidation" - and that of collusion between the co-accused; they did not, however, give any details concerning such risks (see paragraphs 16, 22 and 35 above).

93. According to the Government, the threats against Mr Moracchini had made it impossible to consider releasing Mr Tomasi. Mr Tomasi would have been able to increase the effectiveness of the pressure brought to bear on Mr Moracchini, who had been at the origin of the prosecution and who had tried to commit suicide.

94. The applicant denied this, whereas the Commission did not express a view.

95. In the Court's opinion, there was, from the outset, a genuine risk that pressure might be brought to bear on the witnesses. It gradually diminished, without however disappearing completely.

(d) Danger of the applicant's absconding

96. The Government contended that there had been a danger that the applicant would abscond. They invoked the seriousness of the sentence which Mr Tomasi risked. They also drew support for their view from the escape of Mr Pieri, who, facing prosecution for the same offences as the applicant and having like him always protested his innocence, had evaded recapture for three and a half years. Finally, they stressed the special circumstances of the situation in Corsica.

97. The applicant replied that he had been capable of providing sufficient guarantees that he would appear for trial; these guarantees resided in his status as a shopkeeper, his clean police record and the fact that he was of good repute.

98. The Court notes in the first place that the reasoning put forward by the Government in this respect did not appear in the contested judicial decisions. The latter were admittedly based for the most part on the need to ensure that Mr Tomasi remained at the disposal of the judicial authorities (see paragraphs 16, 22, 31 and 35 above), but only one of them - the decision of the Poitiers

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indictments division of 22 May 1987 - referred to a specific element in this connection: the help which members of the ex-FLNC could have given the applicant to enable him to evade trial (see paragraph 35 above).

In addition, the Court points out that the danger of absconding cannot be gauged solely on the basis of the severity of the sentence risked; it must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see, inter alia, the Letellier v. France judgment of 26 June 1991, Series A no. 207, p. 19, para. 43). In this case, the decisions of the judicial investigating authorities contained scarcely any reason capable of explaining why, notwithstanding the arguments advanced by the applicant in his applications for release, they considered the risk of his absconding to be decisive and why they did not seek to counter it by, for instance, requiring the lodging of a security and placing him under court supervision.

(e) Recapitulation

99. In conclusion, some of the reasons for dismissing Mr Tomasi's applications were both relevant and sufficient, but with the passing of time they became much less so, and it is thus necessary to consider the conduct of the proceedings.

2. Conduct of the proceedings

100. According to the applicant, the case was not at all complex; indeed the investigation had been completed as early as 18 October 1983, the date of the recapitulatory examination (see paragraph 12 above). However, there had been numerous errors and omissions on the part of the judicial authorities. In particular, the public prosecutor had refused to make submissions (réquisitions), requested investigative measures which had already been carried out, asked for the transfer of jurisdiction from the Bastia courts, instituted proceedings incorrectly in a court which lacked jurisdiction and placed the accused at a considerable distance from the investigating authority. The applicant acknowledged that the Law of 30 December 1986 had complicated the situation by making the Law of 9 September 1986 applicable to cases already pending, but by that time Mr Tomasi had been in detention for nearly four years. He complained that he had been questioned by an investigating judge only once in five years, on 5 September 1985 in Bordeaux (see paragraph 19 above).

On the subject of his own conduct, he pointed out that he had lodged twenty-one of his twenty-three applications for release after his recapitulatory examination (see paragraphs 14, 21, 31 and 33-36 above) and that his appeal on points of law against the decision of the Bordeaux indictments division of 27 May 1986 had led to the decision being quashed for infringement of the rights of the defence (see paragraph 25 above).

The Commission essentially agreed with the applicant's position.

101. The Government, for their part, did not consider the length of the detention in question unreasonable. They stressed in the first place the complexity of the process of indicting the applicant and his three co-accused, owing to the operation of the Law of 30 December 1986 and the joint jurisdiction of the indictments divisions of Poitiers and Bordeaux (see paragraphs 17-18 and 24-30

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above). They also pointed to the rhythm at which measures had been taken in the proceedings as showing that the authorities had consistently displayed due diligence, the two delays in the investigation being the result of the relinquishment of jurisdiction by the Bastia judge and the application of the Law of 30 December 1986 (ibid.). They criticised Mr Tomasi for having filed several appeals to the Court of Cassation, in particular against the first committal decision delivered on 27 May 1986 at Bordeaux (see paragraph 25 above), which, they contended, had substantially delayed the opening of the trial. Finally they emphasised the large number of applications for release lodged by the applicant and expressed the view that he was partly responsible for the length of his detention.

102. The Court fully appreciates that the right of an accused in detention to have his case examined with particular expedition must not unduly hinder the efforts of the courts to carry out their tasks with proper care (see, inter alia, mutatis mutandis, the Toth v. Austria judgment of 12 December 1991, Series A no. 224, pp. 20-21, para. 77). The evidence shows, nevertheless, that in this case the French courts did not act with the necessary promptness. Moreover, the principal public prosecutor at the Court of Cassation acknowledged this in his opinion of 5 June 1991 before the Compensation Board: the investigation "could have been considerably shortened without the various delays noted", in particular from November 1983 to January 1985 and from May 1986 to April 1988 (see paragraph 41 above). Accordingly, the length of the contested detention would not appear to be essentially attributable either to the complexity of the case or to the applicant's conduct.

3. Conclusion

103. There has therefore been a violation of Article 5 para. 3 (art. 5-3).

II. ALLEGED VIOLATION OF ARTICLE 3 (art. 3)

104. Mr Tomasi claimed to have suffered during his period of custody at Bastia police station ill-treatment incompatible with Article 3 (art. 3), according to which:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Government's preliminary objection

105. The Government pleaded the applicant's failure to exhaust his domestic remedies. They argued that he could have brought an action for damages in the civil courts against the State alleging culpable conduct on the part of its officials in the performance of their duties.

106. The only submission concerning the failure to exhaust domestic remedies raised by the Government before the Commission in the context of Article 3 (art. 3) related to a completely different matter, namely the claim that the filing of an application in Strasbourg was premature as no decision on the merits had been reached in the French courts. The Court, like the Delegate of the Commission, concludes from this that the Government are estopped from relying on their objection.

B. Merits of the complaint

107. In the circumstances of this case Mr Tomasi's complaint

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raises two issues, which are separate although closely linked: firstly that of the causal connection between the treatment which the applicant allegedly suffered during his police custody and the injuries noted subsequently by the investigating judge and the doctors; and, secondly and if necessary, the gravity of the treatment inflicted.

1. The causal connection between the treatment complained of and the injuries noted

108. According to the applicant, the observation made on 25 March 1983 by the Bastia investigating judge and the reports drawn up by various doctors at the end of his police custody (see paragraphs 45, 47, 48 and 50 above) confirmed his statements, even though it was, he said, to be regretted that the prison authorities had failed to communicate the X-rays effected on 2 April 1983 at Bastia Hospital (see paragraph 68 above). His body had borne marks which had only one origin, the ill-treatment inflicted on him for a period of forty odd hours by some of the police-officers responsible for his interrogation: he had been slapped, kicked, punched and given forearm blows, made to stand for long periods and without support, hands handcuffed behind the back; he had been spat upon, made to stand naked in front of an open window, deprived of food, threatened with a firearm and so on.

109. The Government acknowledged that they could give no explanation as to the cause of the injuries, but they maintained that they had not resulted from the treatment complained of by Mr Tomasi. The medical certificates showed, in their opinion, that the slight bruises and abrasions noted were totally inconsistent with the acts of violence described by the applicant; the certificate of the Chief Medical Officer of Bastia Prison of 4 July 1989 had been drawn up a long time after the event and was in complete contradiction with the earlier certificates. The chronology of the interrogation sessions, which had not been contested by the applicant, in no way corresponded to the allegations. Finally, the five other persons in police custody at the time had neither noticed nor heard anything, and although one of them referred to Mr Tomasi's losing a tooth, this fact was not mentioned by a doctor until six years later. In short, a clear doubt subsisted, which excluded any presumption of the existence of a causal connection.

110. Like the Commission, the Court bases its view on several considerations.

In the first place, no one has claimed that the marks noted on the applicant's body could have dated from a period prior to his being taken into custody or could have originated in an act carried out by the applicant against himself or again as a result of an escape attempt.

In addition, at his first appearance before the investigating judge, he drew attention to the marks which he bore on his chest and his ear; the judge took note of this and immediately designated an expert (see paragraphs 45 and 48 above).

Furthermore, four different doctors - one of whom was an official of the prison authorities - examined the accused in the days following the end of his police custody. Their certificates contain precise and concurring medical observations and indicate dates for the occurrence of the injuries which correspond to the period spent in custody on police premises (see paragraphs 47, 48 and 50 above).

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111. This conclusion makes it unnecessary for the Court to inquire into the other acts which it is claimed the officials in question carried out.

2. The gravity of the treatment complained of

112. Relying on the Ireland v. the United Kingdom judgment of 18 January 1978 (Series A no. 25), the applicant maintained that the blows which he had received constituted inhuman and degrading treatment. They had not only caused him intense physical and mental suffering; they had also aroused in him feelings of fear, anguish and inferiority capable of humiliating him and breaking his physical or moral resistance.

He argued that special vigilance was required of the Court in this respect in view of the particular features of the French system of police custody, notably the absence of a lawyer and a lack of any contact with the outside world.

113. The Commission stressed the vulnerability of a person held in police custody and expressed its surprise at the times chosen to interrogate the applicant. Although the injuries observed might appear to be relatively slight, they nevertheless constituted outward signs of the use of physical force on an individual deprived of his liberty and therefore in a state of inferiority. The treatment had therefore been both inhuman and degrading.

114. According to the Government, on the other hand, the "minimum level of severity" required by the Court's case-law (see the Ireland v. the United Kingdom judgment cited above and the Tyrer v. the United Kingdom judgment of 25 April 1978, Series A no. 26) had not been attained. It was necessary to take into account not only that the injuries were slight, but also the other facts of the case: Mr Tomasi's youth and good state of health, the moderate length of the interrogations (fourteen hours, three of which were during the night), "particular circumstances" obtaining in Corsica at the time and the fact that he had been suspected of participating in a terrorist attack which had resulted in the death of one man and grave injuries to another. In the Government's view, the Commission's interpretation of Article 3 (art. 3) in this case was based on a misunderstanding of the aim of that provision.

115. The Court cannot accept this argument. It does not consider that it has to examine the system of police custody in France and the rules pertaining thereto, or, in this case, the length and the timing of the applicant's interrogations. It finds it sufficient to observe that the medical certificates and reports, drawn up in total independence by medical practitioners, attest to the large number of blows inflicted on Mr Tomasi and their intensity; these are two elements which are sufficiently serious to render such treatment inhuman and degrading. The requirements of the investigation and the undeniable difficulties inherent in the fight against crime, particularly with regard to terrorism, cannot result in limits being placed on the protection to be afforded in respect of the physical integrity of individuals.

3. Conclusion

116. There has accordingly been a violation of Article 3 (art. 3).

III. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

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117. The applicant finally complained of the time taken to examine his complaint against persons unknown, lodged together with an application to join the proceedings as a civil party, in respect of the ill-treatment which he had suffered during his police custody. He relied on Article 6 para. 1 (art. 6-1), which is worded as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Government's preliminary objection

118. The Government contended, as they had done before the Commission, that the applicant had failed to exhaust his domestic remedies, in so far as he had not brought an action against the State for compensation pursuant to Article 781-1 of the Code of Judicial Organisation.

119. The Court confines itself to observing that this submission is out of time having been made for the first time before it at the hearing of 25 February 1992, and not within the time-limits laid down in Rule 48 para. 1 of the Rules of Court.

B. Merits of the complaint

1. Applicability of Article 6 para. 1 (art. 6-1)

120. In the Government's view, the contested proceedings did not fall within the scope of the notion of "determination of ... civil rights and obligations". By filing an application to join the proceedings as a civil party, the person who claimed to be injured by a criminal offence set in motion the prosecution or associated himself with proceedings which had already been brought by the prosecuting authority. He sought to secure the conviction and sentencing of the perpetrator of the offence in question and did not claim any pecuniary reparation. In other words, an investigation opened upon the filing of such an application concerned the existence of an offence and not that of a right.

121. Like the applicant and the Commission, the Court cannot accept this view.

Article 85 of the Code of Criminal Procedure provides for the filing of a complaint with an application to join the proceedings as a civil party. According to the case-law of the Court of Cassation (Crim. 9 February 1961, Dalloz 1961, p. 306), that provision simply applies Article 2 of that Code which is worded as follows:

> "Anyone who has personally suffered damage directly caused by an offence [crime, délit or contravention] may institute civil proceedings for damages.
>
> ..."

The investigating judge will find the civil application admissible - as he did in this instance - provided that, in the light of the facts relied upon, he can presume the existence of the damage alleged and a direct link with an offence (ibid.).

The right to compensation claimed by Mr Tomasi therefore depended on the outcome of his complaint, in other words on the conviction of the perpetrators of the treatment complained of. It

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was a civil right, notwithstanding the fact that the criminal courts had jurisdiction (see, mutatis mutandis, the Moreira de Azevedo v. Portugal judgment of 23 October 1990, Series A no. 189, p. 17, para. 67).

122. In conclusion, Article 6 para. 1 (art. 6-1) was applicable.

2. Compliance with Article 6 para. 1 (art. 6-1)

123. It remains to establish whether a "reasonable time" was exceeded. The applicant and the Commission considered that it had been, whereas the Government denied this.

(a) Period to be taken into consideration

124. The period to be taken into consideration began on 29 March 1983, the date on which Mr Tomasi filed his complaint; it ended on 6 February 1989, with the delivery of the Court of Cassation's judgment declaring the applicant's appeal from the Bordeaux indictments division's decision inadmissible (see paragraphs 46 and 67 above). It therefore lasted more than five years and ten months.

(b) Reasonableness of the length of the proceedings

125. The reasonableness of the length of proceedings is to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case, which in this instance call for an overall assessment.

A reading of the decisions given in these proceedings (see paragraphs 63, 66 and 67 above) shows that the case was not a particularly complex one. In addition, the applicant hardly contributed to delaying the outcome of the proceedings by challenging in the Bordeaux indictments division the decision finding no case to answer and by requesting that division to order a further inquiry (see paragraph 64 above). Responsibility for the delays found lies essentially with the judicial authorities. In particular, the Bastia public prosecutor allowed more than a year and a half to elapse before asking the Court of Cassation to designate the competent investigating authority (see paragraphs 57-58 above). The Bordeaux investigating judge heard Mr Tomasi only once and does not seem to have carried out any investigative measure between March and September 1985, and then between January 1986 and January 1987 (see paragraphs 59-61 above).

There has accordingly been a violation of Article 6 para. 1 (art. 6-1).

IV. APPLICATION OF ARTICLE 50 (art. 50)

126. According to Article 50 (art. 50):

> "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 the applicant claimed compensation for damage and the reimbursement of costs.

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A. Damage

127. Mr Tomasi distinguished three categories of damage:

(a) pecuniary damage of 900,000 francs deriving from the violation of Article 5 para. 3 (art. 5-3), corresponding to loss of salary (600,000 francs) and of commercial income (300,000 francs);

(b) damage assessed at a lump sum of 200,000 francs and payable, again in connection with Article 5 para. 3 (art. 5-3), in respect of the thirty-two visits made by his family to the continent in order to see him in prison;

(c) non-pecuniary damage assessed at 1,500,000 francs, namely 1,000,000 for the violation of Article 5 para. 3 (art. 5-3) and 500,000 for the breach of Articles 3 and 6 (art. 3, art. 6).

128. In the Government's view, the Compensation Board has already compensated any damage linked to the excessive length of the pre-trial detention. If the Court were to find a violation of Article 6 para. 1 and Article 3 (art. 6-1, art. 3), its judgment would provide sufficient just satisfaction.

129. The Delegate of the Commission recommended the payment of a sum covering non-pecuniary and pecuniary damage, but left it to the Court to assess the quantum of such an award.

130. The Court finds that the applicant sustained undeniable non-pecuniary and pecuniary damage. Taking into account the various relevant considerations, including the Compensation Board's decision, and making an assessment on an equitable basis in accordance with Article 50 (art. 50), it awards him 700,000 francs.

B. Costs and expenses

131. Mr Tomasi also claimed the reimbursement of his costs and expenses. For the proceedings before the French courts, he sought 276,500 francs (Mr Leclerc and Mr Lachaud: 141,500 francs; Mr Stagnara: 100,000 francs; Mr Boulanger: 5,000 francs; Mrs Waquet: 30,000 francs.). In respect of the proceedings before the Convention organs, he requested 237,200 francs.

132. The Government and the Delegate of the Commission did not express a view on the first amount. As regards the second, the Government referred to decisions in cases concerning France, whereas the Commission left the matter to be determined by the Court.

133. Making an assessment on an equitable basis and having regard to the criteria which it applies in this field, the Court awards the applicant an overall amount of 300,000 francs.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary objections;

2. Holds that there has been a violation of Article 5 para. 3, Article 3 and Article 6 para. 1 (art. 5-3, art. 3, art. 6-1);

3. Holds that the respondent State is to pay to the applicant, within three months, 700,000 (seven hundred thousand) French francs for damage and 300,000 (three hundred thousand) francs in respect of costs and expenses;

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4. 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 27 August 1992.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the concurring opinion of Mr De Meyer is annexed to this judgment.

Initialled: R. R.

Initialled: M.-A. E.

CONCURRING OPINION OF JUDGE DE MEYER

(Translation)

It would be unfortunate if paragraphs 107 to 115 of the judgment were to leave the impression that blows inflicted on a suspect in police custody are prohibited only in so far as they exceed a certain "minimum level of severity"1, for example on account of the "large number" of such blows and their "intensity"2.

Any use of physical force in respect of a person deprived of his liberty which is not made strictly necessary as a result of his own conduct3 violates human dignity and must therefore be regarded as a breach of the right guaranteed under Article 3 (art. 3) of the Convention4.

At the most the severity of the treatment is relevant in determining, where appropriate, whether there has been torture5.

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1 Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 162. See also paragraphs 91 and 102 of the Commission's report in the present case.

2 Paragraph 115 of the present judgment.

3 For instance in the case of an "escape attempt" or "an act carried out ... against himself" (possibilities envisaged at paragraph 110 of the judgment) or against another person.

4 Even if the violence consists only of "slaps or blows of the hand to the head or face". It is somewhat surprising that the Commission felt able to condone such "roughness"; see in this connection its reports of 1969 in the Greek case, Yearbook, vol. 12, p. 501, and of 1976 in the Ireland v. the United Kingdom case, Series B no. 23-I, pp. 388-389.

5 Torture constitutes "an aggravated ... form of cruel, inhuman or degrading treatment or punishment": Article 1 para. 1 of Resolution 3452 (XXX), adopted by the General Assembly of the United Nations on 9 December 1975. See also the Ireland v. the United Kingdom judgment, cited above, pp. 66-67, para. 167, and the separate opinions of Judges Zekia, O'Donoghue and Evrigenis, ibid., pp. 97, 106 and 136, as well as the above-mentioned Commission

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reports in the Greek case, p. 186, and the Ireland v. United Kingdom case, p. 388.

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In the case of Tomasi v. France*,

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,
Mr R. Bernhardt,
Mr F. Gölcüklü,
Mr F. Matscher,
Mr L.-E. Pettiti,
Mr C. Russo,
Mr A. Spielmann,
Mr J. De Meyer,
Mr J.M. Morenilla,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 27 February and 25 June 1992,

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

Notes by the Registrar

* The case is numbered 27/1991/279/350. 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.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission"), and then by the Government of the French Republic ("the Government"), on 8 March and 13 May 1991, 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. 12850/87) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr Félix Tomasi, on 10 March 1987.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Article 48 (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 Articles 3, 5 para. 3 and 6 para. 1 (art. 3, art. 5-3, art. 6-1).

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 lawyers

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who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 22 March 1991, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mrs D. Bindschedler-Robert, Mr F. Matscher, Mr J. Pinheiro Farinha, Sir Vincent Evans, Mr C. Russo, Mr R. Bernhardt and Mr J.M. Morenilla (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr F. Gölcüklü, Mr A. Spielmann and Mr N. Valticos, substitute judges, replaced Mrs Bindschedler-Robert, Mr Pinheiro Farinha and Sir Vincent Evans, who had resigned and whose successors at the Court had taken up their duties before the hearing (Rules 2 para. 3 and 22 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 lawyers on the organisation of the proceedure (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Government, the applicant and the Delegate of the Commission lodged their memorials on 5 November, 22 November and 13 December 1991, respectively.

On 9 July 1991 the Commission produced the documents in the proceedings before it, as the Registrar had requested it to do on the instructions of the President.

On 20 February 1992 one of the applicant's lawyers provided various documents at the request of the Registrar or with the Court's leave, as the case may be (Rule 37 para. 1 in fine).

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 February 1992. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr J.-P. Puissochet, Director of Legal Affairs, Ministry of Foreign Affairs, Agent,
Mr B. Gain, Head of the Human Rights Section, Department of Legal Affairs, Ministry of Foreign Affairs,
Miss M. Picard, magistrat, on secondment to the Department of Legal Affairs, Ministry of Foreign Affairs,
Mr R. Riera, Head of the Litigation and Legal Affairs Section, Department of Public Freedoms and Legal Affairs, Ministry of the Interior,
Mr J. Boulard, magistrat, on secondment to the Department of Criminal Affairs and Pardons, Ministry of Justice, Counsel;

(b) for the Commission

Mr H.G. Schermers, Delegate;

(c) for the applicant

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Mr H. Leclerc, avocat,
Mr V. Stagnara, avocat, Counsel.

The Court heard addresses by Mr Puissochet for the Government, by Mr Schermers for the Commission and by Mr Leclerc and Mr Stagnara for the applicant, as well as their answers to its questions. The applicant also addressed the Court.

On the same day the Government replied in writing to the questions put by the Court.

On 7 April one of the applicant's lawyers sent to the Registrar a letter concerning these questions, together with a document, with the Court's leave (Rule 37 para. 1 in fine).

6. At the deliberations on 25 June 1992 Mr J. De Meyer, substitute judge, who had attended the hearing, replaced Mr Valticos, who was prevented from taking part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

AS TO THE FACTS

7. Mr Félix Tomasi, a French national born in 1952, resides at Bastia (Haute-Corse). He is both a shopkeeper and a salaried accountant. At the time of his arrest, he was an active member of a Corsican political organisation, which put up candidates for the local elections and of which he was the treasurer.

8. On 23 March 1983 the police apprehended him in his shop and placed him in police custody until 25 March at Bastia central police station.

They suspected him of having taken part in an attack at Sorbo-Ocagnano (Haute-Corse) in the evening of 11 February 1982 against the rest centre of the Foreign Legion, which was unoccupied at that time of the year. Senior Corporal Rossi and Private Steinte, who, unarmed, were responsible for maintaining and guarding the centre, had been shot at and wounded, the former fatally and the latter very severely.

The attack had been carried out by a commando of several persons wearing balaclava helmets to conceal their features. The following day the "ex-FLNC" (the Corsican National Liberation Front), a movement seeking independence which had been dissolved by decree, had claimed responsibility for the attack and for twenty-four other bomb attacks which had been perpetrated the same night.

9. On 12 February 1982 the Bastia tribunal de grande instance had opened an investigation relating to charges of murder, attempted murder and the carrying of category 1 and category 4 weapons and ammunition. The same day the investigating judge had issued instructions for evidence to be taken on commission (commission rogatoire) to the Regional Criminal Investigation Department (SRPJ) of Ajaccio.

I. The criminal proceedings instituted against the applicant

A. The investigation proceedings
(25 March 1983 - 27 May 1986)

1. The proceedings conducted in Bastia
(25 March 1983 - 22 May 1985)

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(a) The investigative measures

i. Judge Pancrazi

10. On 25 March 1983 Mr Pancrazi, investigating judge at Bastia, charged Mr Tomasi and remanded him in custody following the latter's first appearance before him; he took the same measures in respect of a certain Mr Pieri. On 8 April he questioned Mr Tomasi on his alleged involvement in the offences.

11. He took evidence from witnesses on 28, 29 and 31 March, 14 and 29 April, 19 and 30 May and 2 June 1983.

On 19 May he questioned Mr Pieri and on 26 May another co-accused, Mr Moracchini, who had been held on remand since 24 March 1983. He organised confrontations between them on 30 and 31 May, and then on 1 June.

In addition he issued formal instructions for evidence to be taken on 26 May and 27 October 1983.

12. The recapitulatory examination of Mr Tomasi and Mr Pieri was conducted on 18 October 1983, and that of Mr Moracchini on 21 November.

On 26 October 1983 the investigating judge visited the scene of the crime.

ii. Judge Huber

13. The case was transferred to another investigating judge, Mr Huber, with effect from 2 January 1984.

Mr Pieri escaped from prison on 22 January 1984; he was recaptured on 1 July 1987.

Between 4 May 1984 and 10 January 1985, Mr Huber issued several orders for the inclusion of documents in the file and for their transmission to the prosecuting authorities.

On 24 January 1985 he rejected a request by the applicant for documents to be added to the file.

(b) The applications for release

14. Mr Tomasi submitted eleven applications for release.

15. The investigating judge rejected them by orders of 3 May, 14 June and 24 October 1983, 2 January 1984, 24 January, 20 March, 5 April, 18 April, 24 April, 3 May and 7 May 1985. On 6 June 1984 he issued instructions that the applicant be interviewed in Marseille on the conditions of his detention on remand. That interview took place on 18 June.

16. The applicant challenged the orders of 14 June 1983, 2 January 1984, 24 January and 20 March 1985, but the indictments division (chambre d'accusation) of the Bastia Court of Appeal upheld them on 7 July 1983, 26 June 1984, and 20 February and 17 April 1985.

In its judgment of 20 February 1985 it stated that it was necessary to continue the detention in order to avoid pressure being brought to bear on the witnesses, to prevent unlawful collusion between the accomplices, to protect public order (ordre public) from

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the prejudice caused by the offence and to ensure that Mr Tomasi remained at the disposal of the judicial authorities.

(c) The request for a transfer of jurisdiction

17. On 10 January 1985 the Bastia public prosecutor applied to the principal public prosecutor of that town for jurisdiction to be transferred on the ground of the climate of intimidation which reigned in the island.

18. On 25 March the principal public prosecutor at the Court of Cassation referred the matter to the Court of Cassation (criminal division), which gave its decision on 22 May; it transferred the case to the Bordeaux investigating judge "in the interests of the proper administration of justice" (Article 662 of the Code of Criminal Procedure).

2. The proceedings conducted in Bordeaux (22 May 1985 - 27 May 1986)

(a) The investigative measures

19. On 5 September 1985 Mr Nicod, investigating judge at Bordeaux, interviewed Mr Tomasi for the first and last time.

He questioned Mr Moracchini on 1 October 1985 and 13 January 1986, and Mr Satti - another co-accused - on 15 November 1985. In addition, he organised a confrontation between them on 13 December 1985.

20. On 14 January 1986 the investigating judge made an order transmitting the documents to the prosecuting authorities.

On 14 February 1986 the Bordeaux public prosecutor decided to forward the case-file to the principal public prosecutor's office.

From mid-March to mid-April 1986, the investigating judge added various documents to the file. On 17 April he made a further order transmitting the case-file to the prosecuting authorities, endorsed by the Bordeaux public prosecutor's office.

The case-file was forwarded to the principal public prosecutor's office by a decision dated 22 April 1986.

(b) The applications for release

21. Mr Tomasi submitted seven applications for his release.

The investigating judge dismissed his applications on 31 May, 7 June, 29 June, 13 August, 10 September and 8 October 1985 and 14 January 1986.

22. On appeals against various of the investigating judge's orders, the indictments division of the Bordeaux Court of Appeal upheld them by decisions of 3 September and 29 October 1985.

The first such decision referred to the particular gravity of the offences, the existence of "precise and convincing evidence", the risk of pressure being brought to bear and of unlawful collusion and the need to maintain public order and to ensure that the applicant appeared for trial.

The second decision contained the following reasoning:

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"It is plain that the offences of which the appellant is accused are particularly serious ones and profoundly prejudiced public order; without disregarding the pertinent observations of the accused's counsel concerning the length of the proceedings, it appears nevertheless that, as the investigating judge decided, Tomasi's continued detention is necessary to protect public order from the prejudice caused by the offences in question and also to avoid pressure being brought to bear or unlawful collusion and to ensure that the accused appears for trial;"

23. The two decisions gave rise to appeals on points of law by the applicant, which were dismissed by the criminal division of the Court of Cassation on 3 December 1985 and 22 January 1986.

The latter decision was based on the following reasons:

"In the light of the available evidence the Court of Cassation is satisfied that the indictments division ordered the continuation of the applicant's detention by a decision which set out the reasons on which it was based with reference to the particular circumstances and which was made under the conditions, and for cases, specified in Article 144 of the Code of Criminal Procedure; it may also be seen from the grounds of the decision that there is in this case, as is required under Article 5 para. 1 (c) (art. 5-1-c) of the Convention, ... reasonable suspicion that the accused has committed an offence; it follows moreover that, having regard to the specific circumstances of the case and the proceedings, the duration of the detention appears reasonable;"

B. The trial proceedings (27 May 1986 - 22 October 1988)

1. Committal for trial

(a) The first committal

24. On 27 May 1986 the indictments division of the Bordeaux Court of Appeal indicted Mr Tomasi and Mr Pieri for murder with premeditation, attempted murder with premeditation and carrying category 1 and category 4 weapons, together with the corresponding ammunition; it committed them - as well as Mr Moracchini and Mr Satti - for trial at the Gironde assize court.

25. On 13 September 1986 the criminal division of the Court of Cassation allowed the appeal lodged by the applicant on 27 June 1986 on the ground that defence counsel had not been allowed to speak last at the hearing on 27 May.

It remitted the case to the indictments division of the Poitiers Court of Appeal, instructing that court to commit the accused for trial at the Gironde assize court if there were grounds for indicting him (Article 611 of the Code of Criminal Procedure).

(b) The second committal

26. On 9 December 1986 the Poitiers indictments division committed Mr Tomasi for trial at the Gironde assize court.

This decision did not give rise to an appeal on points of law.

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(c) The third committal

27. On 3 February 1987 the indictments division of the Bordeaux Court of Appeal ruled that it lacked jurisdiction to commit the applicant - but not his three co-accused - for trial at the specially constituted Gironde assize court, in other words the assize court sitting without a jury. The principal public prosecutor's office had requested it to apply the provisions of Law no. 86-1020 of 9 September 1986, according to which persons accused of acts of terrorism must be tried before such a judicial body.

28. On 7 May 1987 the criminal division of the Court of Cassation dismissed the appeal on this issue filed by the principal public prosecutor at the Bordeaux Court of Appeal.

29. On 16 June 1987 the Poitiers indictments division allowed an application lodged on 20 May 1987 by the prosecuting authority and committed the applicant for trial at the specially constituted Gironde assize court. It thereby acknowledged that the offences of which Mr Tomasi was accused were "related to an individual or collective undertaking aimed at seriously prejudicing public order by intimidation or terror" (Article 706-16 of the Code of Criminal Procedure).

30. On 24 September 1987 the criminal division of the Court of Cassation dismissed a further appeal by the applicant.

2. The applications for release

(a) The first application

31. By a decision of 27 May 1986 (see paragraph 24 above), the Bordeaux indictments division dismissed an application for release which Mr Tomasi had submitted on 6 May. It gave the following grounds:

> "The detention on remand, which started on 25 March 1983, has certainly lasted a very long time. However, the explanation for this lies in the systematic attitude adopted by the accused and the considerable difficulties encountered by the investigating judge. The period of detention, although long, does not in itself constitute a violation of the European Convention on Human Rights. On the contrary, in this particular case continued detention appears to be essential, given the exceptional gravity of the offences and the fact that Tomasi would not hesitate to abscond if he were released."

32. The applicant filed an appeal on points of law, but the criminal division of the Court of Cassation rejected the submission based on the violation of Article 5 para. 3 (art. 5-3) of the Convention. On this issue its judgment of 13 September 1986 stated as follows:

> "In the light of the available evidence the Court of Cassation is satisfied that the applicant's continued detention was properly ordered in accordance with the conditions laid down in Article 148-1 of the [Code of Criminal Procedure], by a decision setting out specific reasons, having regard to the features of the case as is required under Article 145 of that Code and for cases exhaustively listed in Article 144;

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> In addition the indictments division discussed the complexity and the length of the proceedings, carrying out an unfettered appraisal of the facts, which was sufficient and free of contradictions and from which it concluded that the length of the detention on remand had not exceeded a reasonable time [; it follows] that the submission must fail ..."

(b) The second application

33. Mr Tomasi submitted a new application for release on 19 January 1987.

By a decision of 3 February 1987 (see paragraph 27 above) the Bordeaux indictments division found that it lacked jurisdiction as the committal had been decided by the Poitiers indictments division.

(c) The third application

34. On 17 April 1987 the applicant lodged a further application for his release.

On 28 April the Bordeaux indictments division dismissed his application on the ground that the committal had been based on precise and detailed reasons, the offences were extremely serious ones and the detention was necessary to protect public order from the prejudice to which they had given rise.

(d) The fourth application

35. The applicant lodged a further application for release on 22 May 1987 with the indictments division of the Poitiers Court of Appeal, which dismissed it on 2 June for the following reasons:

> "A campaign of intimidation against the witnesses, policemen and judges has been waged in the course of the investigation;
>
> A mere recital ... of the offences which led to Tomasi being charged is sufficient, besides the fact that the said offences seriously prejudiced public order, to justify the accused's continued detention; there is a grave danger that if he were to be released he would enter into contact with members of the FLNC, who would no doubt be only too pleased to help him evade trial; it does not appear that his continued detention is, in the circumstances, such as to infringe the provisions of the Convention ..."

(e) The fifth application

36. On 6 November 1987 the applicant once again applied to the Bordeaux indictments division for his release.

On 13 November his application was dismissed on account of the extreme gravity of the alleged offences and the need to protect public order from the prejudice created thereby.

37. He then filed an appeal on points of law, which the criminal division of the Court of Cassation dismissed on 2 March 1988.

3. The trial

38. On 22 January 1988 the President of the Bordeaux Court of

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Appeal had directed that the session of the assize court was to open on 16 May 1988.

On 28 April the President decided to postpone the opening of the session until 17 October 1988, following an exchange of correspondence in March and April between the principal public prosecutor's office and counsel for Mr Tomasi and Mr Pieri.

On 15 July and 23 September he altered the composition of the trial court.

39. The trial took place from 17 to 22 October 1988. On that last date, the applicant was acquitted and immediately released. His three co-accused were given suspended sentences of one year's imprisonment for carrying or possession - as the case may be - of a category 1 weapon.

C. The compensation proceedings (18 April 1989 - 8 November 1991)

1. The application to the Compensation Board

40. On 18 April 1989 Mr Tomasi lodged a claim with the Compensation Board at the Court of Cassation under Article 149 of the Code of Criminal Procedure. According to this provision, "... compensation may be accorded to a person who has been held in detention on remand during proceedings terminated by a decision finding that he has no case to answer (non-lieu) or acquitting him, when that decision has become final, where such detention has caused him damage of a clearly exceptional and particularly serious nature".

2. The submissions of the principal public prosecutor at the Court of Cassation

41. On 5 June 1991 the principal public prosecutor (procureur général) at the Court of Cassation made the following submissions to the Compensation Board:

"...

IN THE MATTER OF THE DETENTION

During his detention, Tomasi lodged twenty applications for release, eleven applications to the Bastia investigating judge and nine to the investigating judge and the indictments division in Bordeaux.

Six judgments confirming decisions were given, four by the Bastia indictments division and two by that of Bordeaux.

Finally, two decisions of the criminal division of the Court of Cassation, of 17 October and 2 March 1988, dismissed Tomasi's appeals from the two decisions of the Bordeaux indictments division.

In their decisions rejecting the applications for release the investigating judges and the indictments division gave their reasons as being the exceptional gravity of the offences, the prejudice caused to public order, the need to ensure that the accused remained at the disposal of the judicial authorities and the risk of pressure being brought to bear on the witnesses.

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DISCUSSION

1. The length of the proceedings

. From 12 February 1982, the date on which the investigation was opened, to 25 March 1983, Tomasi was not yet implicated.

. From 25 March 1983, the date on which Tomasi was charged, to 18 October 1983, the date of his recapitulatory examination, the proceedings progressed at a normal pace and there were no delays.

. From November 1983 to May 1984 the proceedings slowed down and consisted of measures which could have been taken previously if the commissions rogatoires or the orders relating to them had been issued earlier.

Thus the result of the commission rogatoire concerning the victim's spectacles was not communicated until March 1984; it had not been issued until 27 October 1983 ..., whereas it could have been right at the beginning of the investigation.

Similarly the commission rogatoire giving instructions inter alia for an inquiry into the victims and into the Sorbo-Ocagnano camp and for a study and plans to be made of the premises was not issued until 26 May 1983 ...

The evidence obtained under that commission rogatoire was produced only in the course of the months of March and April 1984, which undeniably prolonged the proceedings.

. The lack of progress in the proceedings between May 1984 and January 1985 is incomprehensible. Thus nearly three months elapsed between the order of 4 May 1984 transmitting the papers to the prosecuting authority and the additional prosecution submissions of 31 July 1984 calling for a ballistic examination, which had already taken place. Yet it was not until the following 15 November, three and a half months later, that the investigating judge gave his order dismissing that request for an expert examination.

. From January 1985 to May 1985, the time taken for the transmission of documents to the indictments division and then the Court of Cassation and the return of the file to Bordeaux seems normal.

. On the other hand it was not until 5 September 1985, more than three months after the case had been referred to him, that the Bordeaux investigating judge carried out his first substantive investigative measure by interviewing Tomasi, after having dismissed the latter's applications for release on four occasions.

This lapse of time appears excessive in view of the fact that an investigating judge must give priority to a case concerning a person held in detention on remand; he has a duty to familiarise himself with it and proceed with the investigation as quickly as possible.

. From September 1985 to 14 January 1986 the interrogations and confrontations were continued at the rate of one investigative measure per month. Interviews held at shorter intervals would have made it possible to reduce the duration of the proceedings significantly.

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. From January 1986 to May 1986 the time taken to complete the file and transmit it to the assize court appears normal.

. On the other hand, from May 1986 to March/April 1988 there was a delay in the proceedings which can under no circumstances be justified by the appeals filed by the accused in pursuance of their statutory rights.

. Finally, it should be noted that the decision in the course of March and April 1988 to renounce holding the May session and to replace it by a session fixed for 17 October 1988 was taken by mutual agreement between the prosecuting authorities and the defence.

In conclusion, in view of the significance and the complexity of the case the investigation was bound to last longer than average. However, it could have been considerably shortened without the various delays noted above.

2. The necessity of keeping Tomasi in detention during the proceedings

Given the nature and the gravity of the offences and the results of the police investigation, Tomasi's detention was at first justified, up until his recapitulatory examination of 18 October 1983.

Moreover, until that date, Tomasi had not filed an application for release. However, by 18 October 1983 the witnesses had already been interviewed and the confrontations carried out.

The measures taken after that date, in particular the commissions rogatoires and the expert examinations, did not concern Tomasi directly, except the expert medical examinations ordered following his declarations regarding the conditions of his police custody, which clearly could not justify his continued detention.

It should moreover be stressed that between 18 October 1983, the date of the recapitulatory record, and 17 October 1988, the date on which the assize court session opened, in other words for five years, Tomasi was questioned only once, on 5 September 1985, and at his request.

The decisions rejecting his various applications for release were based on the exceptional gravity of the offences, the prejudice caused to public order, the necessity of ensuring that the accused remained at the disposal of the judicial authorities and the risk of pressure being brought to bear on the witnesses.

The gravity, even of an exceptional nature, of offences may constitute a ground for detention only if there is sufficient evidence against the person held.

In this case, charges had been preferred against Tomasi, who had always protested his innocence and had been on hunger strike several times, exclusively on the basis of Moracchini's statements, which were far from being as precise as they were claimed to be throughout the proceedings.

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In fact, according to various documents from the proceedings, and in particular:

- the report of the public prosecutor to the Bastia principal public prosecutor of 11 April 1983 ...,

- the memorandum from the SRPJ of Ajaccio of 8 June 1983 ...,

- the application by the Bastia investigating judge for a transfer of jurisdiction of 10 January 1985 ..., Moracchini stated that Tomasi had suggested that he take part in the `nuit bleue' (night of terrorist outrages) of 11 to 12 February 1982, and specifically carry out an attack against the Foreign Legion camp of Sorbo-Ocagnano.

Yet if all Moracchini's statements are read carefully it may be seen that although he did state that Tomasi had suggested that he participate in the `nuit bleue', at no time did he mention an attack against the Foreign Legion camp ...

Quite the contrary, Moracchini always claimed that he had learned of the attack for the first time the day after the events.

Thus, for example, in the course of his interrogation at his first appearance before the investigating judge ... Moracchini stated as follows:

'I was aware that Pieri knew Félix Tomasi. The latter had indeed suggested a few days earlier that I should take part in a `nuit bleue'. I had refused, but at no time did he say what attack I would have been expected to carry out. As for me, I only heard about the legionaries through the newspapers, on the morning of 12 February.'

Furthermore, it should be observed that all the witnesses who confirmed Moracchini's statements merely reported what he had told them. None of them was a direct witness to the events.

In addition, it does not seem that the release of Tomasi, who could provide sound guarantees that he would appear for trial and who had no previous convictions, could have represented a risk of pressure being brought to bear on witnesses or on Moracchini, a co-accused who was free.

In fact, Tomasi, like Pieri and Moracchini, was not remanded in custody until more than a year after the events and Pieri, implicated by the same witnesses as Tomasi, had escaped from prison on 22 January 1984 and remained free for three and a half years until his arrest on 1 July 1987, apparently without any pressure being brought to bear on the witnesses.

Finally, it should be noted that on 10 March 1987 Félix Tomasi lodged an application with the European Commission of Human Rights under Article 25 (art. 25) of the European Convention for the Protection of Human Rights, making the following complaints:

- excessive duration of his detention on remand (violation

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of Article 5 para. 3 of the Convention) (art. 5-3);

- inhuman and degrading treatment during his police custody (violation of Article 3 of the Convention) (art. 3);

- excessive duration of the investigation proceedings opened following a complaint accompanied by a civil claim (violation of Article 6 para. 1 of the Convention) (art. 6-1).

This application was the subject of a report by the European Commission of Human Rights adopted on 11 December 1990, in which the Commission declared the application admissible and expressed the opinion by twelve votes to two that there had been, in the case under review, a violation of Article 3 (art. 3) of the Convention, by thirteen votes to one, that there had been a violation of Article 6 para. 1 (art. 6-1) of the Convention and, unanimously, that there had been a violation of Article 5 para. 3 (art. 5-3) of the Convention.

IN CONCLUSION

In the light of the various considerations set out above, and the particularly distressing conditions of his detention, Félix Tomasi, who spent five years and nearly seven months in detention and in respect of whom the investigation produced only weak and insufficient evidence, suffered considerable damage on this account.

For all these reasons I call upon the Board to award appropriate compensation."

3. The decision of the Compensation Board

42. By a decision of 8 November 1991, which contained no statement of the reasons on which it was based, the Compensation Board awarded the applicant 300,000 French francs.

II. The criminal proceedings instituted by the applicant

A. The origin and the filing of the complaint

43. Mr Tomasi was apprehended on 23 March 1983 at 9 a.m. (see paragraph 8 above). He remained in police custody until 9 a.m. on 25 March, in other words forty-eight hours, Judge Pancrazi having granted the police an extension of twenty-four hours at 6 a.m. on 24 March.

44. During this period, the applicant:

(a) had been present at a search of his home on 23 March from 9.15 a.m. to 12.50 p.m.;

(b) had undergone several interrogations:

- on 23 March from 1.15 p.m. to 2.30 p.m., from 5.30 p.m. to 8 p.m. and from 8.40 p.m. to 10.15 p.m., a total of five hours and twenty minutes;

- on 24 March from 1.30 a.m. to 2 a.m., from 4 a.m. to 4.45 a.m., from 11 a.m. to 1 p.m., from 3.40 p.m. to 8 p.m. and from 8.30 p.m. to 9.20 p.m., a total of eight hours and twenty-five minutes;

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- on 25 March from 4.30 a.m. to 4.50 a.m., twenty minutes;

(c) had been examined on 24 March at 11 a.m. by a doctor, who had concluded that his state of health was compatible with the extension of the police custody.

The applicant signed the recapitulatory record drawn up at the end of his police custody, but refused to sign that of his last interrogation.

45. On 25 March 1983, when he first appeared before the investigating judge (see paragraph 10 above), he made the following statement:

> "I note the charges of which you have informed me. I am a declared member of the CCN [Cunsulta di i cumitati naziunalisti]. I am not a member of the FLNC. I will make a statement later in the presence of my lawyer, Mr Stagnara.
>
> I should like to add, however, that I was struck during my police custody by police-officers; I do not wish to give their names. I was not allowed any rest. I had to ask the doctor who visited me for something to eat because I was left without food and all I had to eat was one sandwich. This morning, I was left naked in front of an open window for two or three hours. I was then dressed and beaten up. This went on continuously throughout the police custody. I can show you bruises on my chest and a red patch under my left ear."

The judge had the words "seen, correct" entered at the end of this statement.

46. On 29 March 1983 Mr Tomasi laid a complaint against persons unknown together with an application to join the proceedings as a civil party (constitution de partie civile), "for assault committed by officials in the performance of their duties and abuse of an official position".

The following day the senior investigating judge ordered that the applicant lodge a deposit set at 1,200 francs and communicated the file to the public prosecutor's office.

B. The investigation proceedings (29 March 1983 - 6 February 1989)

1. The proceedings conducted at Bastia (29 March 1983 - 20 March 1985)

(a) The investigative measures

i. Judge Pancrazi

47. On 29 March Mr Pancrazi, the investigating judge, interviewed as a witness Dr Bereni, Senior Medical Officer at Bastia Prison. He stated as follows:

> "I am a medical officer in the Prison Service and I examined Charles Pieri on his arrival at the prison and Félix Tomasi, as I do with all the inmates.
>
> ...

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In Félix Tomasi's case, I observed behind the left ear a haematoma which had spread slightly towards the cheek. I noted slight superficial scratches on the chest. In addition, Tomasi reported pain in his head and neck, as well as in his legs, arms and back, but, as I have already stated, I was unable to find objective evidence to support these claims.

In both cases the injuries were very slight with no serious features and could not lead to incapacity for work."

48. On 25 March 1983 the same judge had instructed a Dr Rovere, an expert attached to the Bastia Court of Appeal, to carry out the following tasks:

"1. Effect an examination of the victim's injuries, illnesses or disabilities, describe them, specify their likely sequelae and give an opinion as to their causes;

2. Describe the extent of the incapacity and assess its probable duration."

The doctor, who had examined Mr Tomasi on 26 March 1983 at 12 noon in the prison, in the presence of the investigating judge, lodged his report on 30 March. The report stated as follows:

"III. CURRENT CONDITION

(1) Symptoms complained of
Mr Félix Tomasi complained of
. acute otalgia in the left ear
. acute parietal and bilateral cephalalgia
. slight back pain
. pains in the upper abdomen
No other symptom was complained of.

(2) Clinical examination

...

(a) General examination:

. Weight: 60kg; height: 1m65 (estimation)
. Blood pressure: 11,5/7
. Pulse rate: 84 beats to the minute
. Cardiopulmonary examination: normal.

(b) Cranio-facial segment:

- Two barely visible abrasions, one on the right temple and the other above the right eyebrow
- Small horizontal bruise to the upper part of the left eyelid, measuring 2cm in length, colour purplish-red
- Pains complained of on palpation of the right parietal region of the skull
- Conjunctival redness in both eyes (the patient states that he had this condition before his police custody), non-traumatic in origin
- Neurological examination:
. Pupils equal size, regular and contractile
. No nystagmus
. Romberg negative
. No asymmetry, no dysdiadochokinesis
. Tendon reflexes - normal

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. No deviation in the index finger test and the blind walk test
- Left ear:
. A dark-red-coloured bruise, warm and allegedly painful on palpation, in the helix and the anthelix
. The external auditory meatus and the eardrum show no sign of a traumatic injury.

(c) Cervical rachis:

. No apparent trace of traumatism
. Pressure on the processus spinosis of the cervical vertebrae C1 and C2 allegedly painful
. Unrestricted neck movement, cracking sounds in articulations could be heard on side movements of the head (commonplace after the age of thirty)
. No muscular contraction.

(d) Thorax and abdomen:

- Ecchymotic striae (vibices) located as follows:
. one at the level of the praesternum
. one at the level of the metasternum
. three others at the level of the epigastric region
. one at the level of the right hypochondrium.
These marks are red in colour, surrounded by a purplish halo, visible in non-artificial light and allegedly painful on palpation.
- No hepatomegaly
- No splenomegaly (enlarged spleen)
- Slight abdominal distension.

(e) Lumbar region:

. No apparent trace of traumatism
. No restriction on scope of trunk movement
. No paravertebral muscular contraction.

(f) Left arm:

On the upper third of the postero-internal face of the arm there is a bruise which is red in colour, with a purplish periphery in its lower part, measuring 8cm in length and 4cm in width, claimed to be painful on palpation.

Below this bruise, two others may be seen, of a circular shape, measuring 1.5cm in diameter, less highly coloured.

IV. DISCUSSION AND CONCLUSION

Mr Félix Tomasi has the following symptoms, as observed in the examination of 26 March 1983:

- Superficial bruising to the left upper eyelid, the front of the chest, in the epigastric region and that of the right hypochondrium, on the left arm and the left ear

- Two barely visible cutaneous abrasions on the right temple.

The red colouring of the bruises with a peripheral purple halo makes it possible to fix the date of their origin as between two and four days before the examination on

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26 March 1983.

The simultaneous presence of abrasions and bruises makes it possible to affirm that these injuries are traumatic in origin; however, biological tests could be carried out in order to eliminate another medical cause.

Their extent and form offer no indications of how they first occurred; they are thus consistent with Mr Tomasi's declarations but could equally have a different traumatic origin.

These injuries entail temporary total incapacity of three days."

49. On 24 June 1983 Judge Pancrazi interviewed Mr Tomasi as an accused. After the expert medical reports concerning the victims of the attack of 12 February 1982 had been read out to the applicant and his co-accused, the applicant stated:

"The injuries which were noted during the examinations made firstly by Dr Rovere and then by Drs Rocca and Ansaldi, were the result of the acts of Superintendent [D.], his deputy [A.] and some of the other officers of the criminal investigation department.

I was beaten for forty hours non-stop. I didn't have a moment's rest. I was left without food and drink.

A police-officer, whom I would be able to recognise, held a loaded pistol to my temple and to my mouth, to make me talk. I was spat upon in the face several times. I was left undressed for a part of the night, in an office, with the doors and windows open. It was in March.

I spent almost all the time in police custody standing, hands handcuffed behind the back. They knocked my head against the wall, hit me in the stomach using forearm blows and I was slapped and kicked continuously. When I fell to the ground I was kicked or slapped to make me get up.

They also threatened to kill me, Superintendent [D.] and officer [A.] told me that if I managed to get off they would kill me. They also said that they would kill my parents. They said that there had been an attack at Lumio where there had been a person injured and that the same thing would happen to my parents, that they would use explosives to kill them.

I would like to say in connection with the injuries to my left ear that, in addition to the bruise noted by Dr Rovere, I bled, to be more precise my ear was bleeding, as I realised when I put a cotton bud in my ear. This lasted for a fortnight. I asked if I could see a specialist and Dr Vellutini told me that I had a perforated eardrum. I also realised afterwards that I had a broken tooth. I was therefore not able to tell this to the experts.

Drs Rocca and Ansaldi stated that the bruise to the left upper eyelid could suggest the shape of spectacles; but my spectacles are worn on the nose and although they may leave marks on the nose, they cannot under any circumstances mark the upper part of the eye."

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ii. Judge N'Guyen

50. Following the lodging of Mr Tomasi's complaint and at the request of the public prosecutor, the President of the Bastia tribunal de grande instance appointed another investigating judge, Mr N'Guyen, on 2 June 1983.

Without waiting for the outcome of the application for an order designating the competent court (see paragraph 55 below), Mr N'Guyen had already appointed two experts of the Bastia Court of Appeal, Dr Rocca and Dr Ansaldi, who had examined the applicant on 29 March 1983 at the prison and submitted their report on 1 April. This document was worded as follows:

"SUMMARY OF THE FACTS:

The patient states as follows:

`On 23 and 24 March 1983 I was beaten up for a period of about thirty-six hours. I was repeatedly punched and kicked mainly in the abdomen, on the head and on the face.'

SYMPTOMS COMPLAINED OF AT THIS TIME:

The patient complains of the following symptoms:
- pain in the left ear;
- buzzing in the ears;
- headache;
- pain in the lumbar region;
- abdominal pain;
- [illegible].

CLINICAL EXAMINATION CARRIED OUT ON TODAY'S DATE

- Weight: 60kg
- Height: 1m65
- Blood pressure: 13/8
- Pulse: 72 beats a minute.

1. Examination of the face and the skull:

Mr Tomasi wears corrective lenses for myopia.

On examining him we noted the following:

- a slight bruising of the upper left eyelid, purplish in colour, 2cm in length;
- minor abrasions 3mm in diameter:
1 - at the level of the right temple,
2 - above the right eyebrow.

On continuing the examination of the face we observed:

- the area of the masticatory muscles was particularly sensitive on palpation, especially on the right;
- elsewhere, the ocular autokinesis was normal;
- the examination of the surface sensitivity of the face was normal;
- facial motility was normal.

Further examination revealed:

- pronounced, diffuse erythema in the auricle of the left ear;

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- auditory capacity appeared normal, tested by the ticking of a watch and whispering.

2. Thoraco-abdominal examination:

Examination showed:

- a number of cutaneous abrasions a few millimetres in diameter, located in the area of the right hypochondrium, the epigastrium, the right lower thoracic region and the left parasternal region, close to the metasternum;
- otherwise, pulmonary auscultation, palpation and percussion of thorax normal;
- likewise examination of the abdomen revealed a supple stomach, no pain;
- examination of the external genital organs showed no bruising, no haematoma, no scar, no trace of traumatism.

3. Examination of the upper members:

- On the left arm, postero-internal face, at the middle part of the arm, a bruise 8cm in length, 4cm in width, oval-shaped.

This bruise was a yellowish colour in the middle and greenish at the periphery.

- There were in addition two small bruises near to the first bruise, of a circular shape, about 4mm in diameter, also of a greenish colour.

4. Examination of the lower members:

Examination entirely normal.

5. Neurological examination:

- Romberg test: negative
- No deviation of index finger
- Muscular strength [illegible] intact
- Tendon reflexes present and symmetrical
- Sensitivity: normal
- Co-ordination: normal.

DISCUSSION AND CONCLUSION

After questioning and carrying out a full clinical examination of Mr Félix Tomasi, we noted the following injuries:

- two bruises, a small one on the left eyelid and a larger one on the left arm;

- in addition, there were abrasions spread out over the thoracic and parasternal region and on the left temple and right eyebrow. These abrasions were of minimal size.

The pains and buzzing in the ear require an opinion from an ear, nose and throat specialist.

The colouring of the bruises makes it possible to fix the date of the originating traumatism at between four and eight days previously.

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The bruise on the left arm could be the result of strong manual and digital pressure. The bruise to the left upper eyelid might suggest the shape of the upper frame of the spectacles worn by Mr Tomasi.

The cutaneous abrasions noted do not indicate a specific traumatic origin.

We did not find any scar, any burn mark, or any other injury capable of suggesting that acts of torture had been committed."

51. On 21 April 1983, at the investigating judge's request, the two doctors filed a further expert opinion. In this they concluded: "Mr Félix Tomasi qualifies for temporary total incapacity of two days".

52. On 1 July 1983 Judge N'Guyen interviewed the applicant in his capacity as a civil party in criminal proceedings. Mr Tomasi made the following statement:

"- ... I think that we arrived at the police station at around midday. They began to question me and typed the first record. I said that I was an active member of the CCN. They asked me if I knew why I was there. I replied that it was not the first time that they had detained members of the CCN.

- It was at that moment that they began to hit me; Superintendent [D.] slapped me repeatedly. Each time he came into the office he egged his men on. He said that they had to make me talk and that they had to use every means of doing so.

He hit me throughout the two days of police custody.

- His deputy [A.] also hit me. He used forearm blows to the stomach, saying that that left no mark. He pulled me by the hair and knocked my head against the wall.

There were others there but I don't know their names: there was a small, dark-haired man, who I think was called [G.]. He slapped me and punched me.

I can also give you the name of [L.] because he told me his name.

There were others too, but I cannot name them.

These men hit me continuously except when I was speaking. As soon as I stopped speaking they hit me.

- I'd like to make clear that I had my hands handcuffed behind my back and I had to remain standing fifty centimetres from the wall. That started at the beginning of the police custody. The body search was not carried out on the ground floor but on the second floor.

- I remember that there was also a man who was with [A.], of the same height, balding. He too hit me throughout the police custody. He took my head and knocked it against the wall.

- I had no rest the first night or the second.

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- I was questioned by about fifteen police-officers who took it in turns. Sometimes they were three, often they were between ten and fifteen. I spent almost forty-eight hours in the same office.

- I was taken down again on 25 March around six in the morning. Until then I had no rest, I had neither eaten nor had anything to drink.

- The first evening I asked for food and drink. The policemen gave me nothing. The following day, as I had asked to see a doctor, he came. I told him that I had been beaten continuously for more than twenty-four hours, that I had not eaten or drunk and that I was being dealt with by torturers. I made him note the marks of the blows to my stomach and face. He did not reply. He took my blood pressure. He told the policemen that I could stand up to it. Indeed I have written to the medical association on this point. When I told him that I had had nothing to eat, he looked at the policemen.

The policemen looked embarrassed and asked me what I wanted. I said that I would like a cup of coffee and a sandwich. They refused to give me the coffee and told me that I would have it if I talked. The sandwich was thrown into the dustbin. It was not until the following morning that the municipal police-officers (l'Urbaine) gave me three or four coffees with croissants and chocolate rolls. That is why when I arrived at the court house I was in a very agitated state.

- I should also like to say that police-officer [L.] took his pistol out of his belt, it was loaded, and held it to my temple and my mouth. He told me to talk. I replied that I couldn't make things up. He read me the records of the interrogations of the others. He told me that I should say the same thing.

- After that, [G.] spat at me about ten times in the face and slapped me.

- The torturer [D.] often came into the office and asked several times `you haven't undressed him yet?'

- At nightfall they took me into another office. It was still on the second floor but couldn't be seen into from outside. There I was completely stripped. This happened during the second night. I was completely naked, in my socks. [D.] arrived, he asked me why they hadn't taken off my socks. He slapped me and continued to question me like that with the doors and windows open. It was a cold March night. I repeat that in the room where I had been put I couldn't be seen from the outside. In the other room, they were careful to lower the metal blind when they turned the light on.

- At one moment I was allowed to sit down. That is when [B.] arrived. He took me by the shirt or jacket and pushed me. He had the handcuffs with which my hands were bound behind my back taken off and made me sit down. He told all the police-officers and the superintendent to leave. He asked me if I wanted anything. I told him that I would like to go to the lavatory and wash myself. He let me go; he

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then spoke to me for an hour. We spoke together as we are speaking today.

- That happened on the 24th at around 8 or 10 o'clock in the evening. [B.] left. They put back the handcuffs and continued to hit me.

- I should also say that my arms and legs were numb. I was sometimes hit so much that I fell to the ground. The policemen made me get up by kicking me and hitting my head against the wall.

- There were also threats to my family. They threatened to blow up the flat where my parents live. They told me about a woman from Lumio who had been blown up and who had been injured and said that they would do the same thing to my parents to kill them. They also told me that they would kill the families of my brother and my sister.

- Police-officer [L.] told me that he would make me close the shop. That it would be French people who would buy it. He told me that he would make all the Corsicans leave. He told me that he would also blow up the shop.

- They made threats against me too. The torturers threatened to kill me. They told me that they would take me to the Legion camp at Calvi and that they would leave me to the legionaries.

Many other things happened but in one hour it is impossible to recount everything that happened over forty hours.

[A.] called me a left-winger. He said that he was sure that I had voted for Mitterrand and that this was the result. They also said that they were about fifteen police-officers who were reliable and that I had better not lay a complaint. They told me that it wasn't the same for the municipal police-officers because there were sympathisers among them and they weren't sure of them.

I would like to say that if I am released, because I am innocent, if something happens to me, it won't be necessary to look any farther. They told me that if I were freed, they would deal with me."

53. By a letter of 3 July 1983 the applicant's lawyer requested the investigating judge to organise a confrontation between his client and the officers who had taken part in the interrogations; he also suggested that the judge should take evidence from the four persons who had been held in custody at the same time because "they could have heard or seen some of the ill-treatment inflicted at Bastia police station", as well as Dr Vellutini "who was asked to examine Mr Tomasi, who had complained of having problems with his ears". In addition, he asked that the record of the applicant's first appearance before Judge Pancrazi be included in the case-file.

54. The participants in the proceedings did not supply either the Commission or the Court with information regarding any investigative measures which may have been taken between 1 July 1983 and 15 January 1985.

(b) The applications for the competent court to be designated

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i. The first application

55. On 31 March 1983 the Bastia public prosecutor submitted an application to the criminal division of the Court of Cassation requesting that the "court responsible for the investigation or trial of the case" be designated. He was acting pursuant to Article 687 of the Code of Criminal Procedure, which concerns cases in which "an officer of the police investigation department is liable to be charged with a criminal offence, allegedly committed in the area in which he performs his duties, whether or not in the performance of those duties".

56. On 27 April 1983 the Court of Cassation rejected the application, because it did not specify either the names or the position of the persons who were liable to be prosecuted as a result of Mr Tomasi's complaint.

ii. The second application

57. On 15 January 1985 the Bastia public prosecutor again applied to the criminal division, seeking the designation of the competent court.

58. On 20 March 1985 the Court of Cassation gave its decision. It declared void the investigative measures carried out after 1 July 1983, the date on which the applicant as the civil party in criminal proceedings had identified the persons whom he accused.

In addition, it instructed the Bordeaux investigating judge to conduct the investigation into the applicant's complaint.

2. The Bordeaux proceedings
(20 March 1985 - 6 February 1989)

(a) Before the investigating judge
(23 April 1985 - 23 June 1987)

i. Judge Nicod

59. On 23 April 1985 the Bordeaux public prosecutor lodged an application for the opening of an investigation and the President of the Bordeaux tribunal de grande instance appointed an investigating judge, Mr Nicod.

60. The latter interviewed Mr Tomasi on only one occasion, on 5 September 1985.

On 24 September he added to the file the certified copies of several documents from the file opened in Bastia, in particular the records of the police custody and of the first appearance before the investigating judge as well as the expert medical reports.

By a letter addressed to the judge on 4 October, the applicant requested a confrontation with the police-officers who had interrogated him.

On 13 December 1985 and 13 January 1986 the investigating judge interviewed as witnesses persons who had been held in police custody on the same premises and at the same time as the applicant. Mr Moracchini stated that he had seen the applicant on the fourth day at Bastia Prison and had noted that he had marks on his abdomen and that an ear was running.

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ii. Judge Lebehot

61. Mr Nicod was appointed to a new post and the President of the Bordeaux tribunal de grande instance replaced him on 7 January 1987 by another judge, Mr Lebehot.

62. On 13 January 1987 the latter issued a commission rogatoire to the Director of the General Inspectorate of the National Police instructing it to undertake a thorough investigation.

Fifteen police-officers who had taken part in the arrests, searches and interrogations were interviewed between 3 and 24 February 1987. None of them admitted having assaulted the persons held in police custody and none of them was confronted with Mr Tomasi.

The results of the commission rogatoire reached the court on 6 March 1987.

63. On 23 June 1987 the investigating judge issued an order finding that there was no case to answer. He cited the same grounds as those set out in the submissions made the previous day by the Bordeaux public prosecutor:

> "... in view of the formal and precise denials by the officers concerned, the accusations made by the complainant, even if they are supported by a few objective medical observations, cannot in themselves constitute serious and concurring indications of guilt such as could justify one or several persons being charged."

(b) In the indictments division of the Court of Appeal (26 June 1987 - 12 July 1988)

64. By a letter of 26 June 1987 Mr Tomasi appealed from the order finding that there was no case to answer to the indictments division of the Bordeaux Court of Appeal. He complained among other things that there had been no confrontation with the police-officers and that the sequelae of his police custody had not been taken into account, in particular the fact that his eardrum had been perforated as was shown by subsequent examinations.

On 12 October he wrote to the President requesting that a confrontation be organised.

65. The indictments division gave its decision on 3 November 1987. It allowed the applicant's appeal and, before ruling on the merits, ordered further inquiries.

On 19 January 1988 the judge with responsibility for these inquiries issued a commission rogatoire to the Director of the General Inspectorate of the National Police. Three other police-officers were thus interviewed, as well as four persons - including Mr Filippi - who had been in police custody at the same time as Mr Tomasi, and the ear, nose and throat specialist - Dr Vellutini - who had examined him in April 1983.

On 28 January 1988 Mr Filippi stated that he had seen the applicant on the morning of 25 March 1983. Mr Tomasi's face had been "bruised and swollen", his hair had been "dishevelled", he had had "bruises on the chest, on the abdomen and under his right armpit"; he had complained that he had been "beaten all the time" and he had "even taken a tooth out of his pocket".

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On 25 February 1988 Dr Vellutini made the following statement:

"...

I carried out a medical examination of Mr Félix Tomasi as an outpatient at Bastia Hospital. I cannot specify the date, but it was in 1983. I treated him for an ear infection and possibly a perforated eardrum. I examined him once or twice, no more than that. I have already told this to the investigating Judge N'Guyen in his chambers. My examination was part of an ordinary consultation and I never issue a medical certificate in those circumstances; I merely treat the patients who are brought to me.

..."

On 18 April 1988 the judge submitted the results of the further inquiries.

66. On 12 July 1988 the indictments division upheld the order finding that there was no case to answer, on the following grounds:

"...

There is no doubt that Antoine Filippi, who was held in police custody at the same time as Tomasi, maintained that he had noticed in the hall of the police station that the latter's face had been `bruised and swollen' and that subsequently he had `personally seen that he had bruises on the chest, abdomen and under the right armpit';

His co-accused Joseph Moracchini had for his part stated that Tomasi `had all his chest grazed and that there was liquid running from an ear';

These statements add somewhat to the observations made by the investigating judge himself when Tomasi came to his chambers, namely the presence of bruises on his chest and a redness under the left ear, as well as those of the doctors designated at various stages in the proceedings;

During the police custody, on 24 March 1983 at 11 a.m., Doctor Gherardi examined Tomasi, who complained to him that he had been beaten, but he did not personally observe anything at that stage.

When he arrived at the prison, on 25 March 1983, Tomasi was seen, as part of the systematic check-ups of detainees, by the Senior Medical Officer, Dr Bereni, who noted the presence of a haematoma behind the left ear spreading slightly down towards the cheek and slight superficial scratches on the chest and took note that the applicant reported pain in the head, the neck, the legs, the arms and back, without any objective symptoms.

An expert, Dr Rovere, appointed by the investigating judge, examined Tomasi on 26 March 1983 at 12 noon and noted that he had superficial bruising on the left upper eyelid, on the front of the chest and in the epigastric region and that of the right hypochondrium, on the left arm and the left ear, as well as two cutaneous abrasions, barely visible, on the right temple; the expert stated that the red colouring of the bruises with a purple peripheral halo made

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it possible to fix the date of their occurrence as between two and four days before the examination and stressed that the fact that abrasions and bruises were present simultaneously gave grounds for affirming their traumatic nature but did not indicate the actual cause of the traumatism; he fixed at three days the duration of the temporary total incapacity.

The expert report which was entrusted to Dr Rocca and Dr Ansaldi, in connection with the investigation opened against persons unknown ... [see paragraph 46 above], revealed in the course of the examination carried out on 29 March the presence of two bruises, one a small one on the left eyelid capable of suggesting the shape of the upper frame of the applicant's spectacles and the other, larger, on the left arm, being possibly the result of very strong manual and digital pressure, as well as abrasions spread out about the thoracic and parasternal regions, on the right temple and the right eyebrow, which did not indicate any specific traumatic cause.

The possibility that the applicant had a perforated eardrum and a bleeding ear was not expressly confirmed by Dr Vellutini, an ear, nose and throat specialist, and was expressly denied by Drs Rovere and Bereni.

In any event a comparative study of the various observations made by several doctors and experts shortly after the supposed date of the acts of violence of which Tomasi complained showed that there was a real discrepancy between such violence (punches and kicks; forearm blows; head hit against the wall for nearly forty hours) and the slight nature of the traumatisms the origin of which is in dispute and cannot be determined.

The officers of the criminal investigation police concerned expressly deny the accusations.

Any confrontation appears at this stage pointless.

There is doubt as to the truth of Tomasi's accusations."

(c) Before the Court of Cassation
(21 July 1988 - 6 February 1989)

67. On 21 July 1988 Mr Tomasi filed an appeal on points of law which the criminal division of the Court of Cassation declared inadmissible on 6 February 1989 on the following grounds:

"On the basis of the grounds given in the contested judgment the Court of Cassation is satisfied that, in upholding the order in question, the indictments division, after having analysed the facts contained in the complaint, set out the grounds from which it inferred that there was not sufficient evidence against anyone of having committed the offence of assault by officials in the performance of their duties;

The appeal submission, in so far as it amounts to contesting the grounds of fact and law relied on by the judges, does not contain any of the complaints which, under Article 575 [of the Code of Criminal Procedure], a civil party in criminal proceedings is authorised to formulate in support of an appeal on points of law against a decision

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that there is no case to answer by the indictments division where no such appeal has been filed by the prosecuting authorities."

C. Subsequent developments

68. At Mr Tomasi's request, Dr Bereni, who was still the Chief Medical Officer at Bastia Prison, drew up a certificate on 4 July 1989, which he gave to the applicant in person "for the appropriate legal purposes". This document was worded as follows:

"I, the undersigned, Dr Jean Bereni, ... hereby certify that I examined the X-rays taken of Mr Tomasi at Toga Bastia Hospital on 2 April 1983.

The X-rays of the left temple show a thickening of the external auditory meatus with a perforation of the eardrum and the presence of a haematoma behind the eardrum.

The special-angle X-rays (Hitz) of the facial structure show, at the level of the bite of the upper left maxillary, the absence of the first molar.

Following these examinations Dr Vellutini, the senior consultant in the ear, nose and throat department, prescribed ear drops (Otipax) and I myself prescribed painkillers and sleeping-pills."

69. In reply to a letter of 26 August 1991, the Director of Bastia Regional Hospital communicated to the applicant the following details:

"(a) The additional investigations carried out have not revealed any new information of a medical nature in addition to that mentioned in my attestation of 4 July 1989 as regards your visit to Bastia General Hospital as an outpatient in the ear, nose and throat department, probably on 1 April 1983.

(b) At the time of your visit the former Toga Hospital did not have a structured system for dealing with outpatient consultations in the specialised departments; in these circumstances, in the case of mere visits without hospitalisation for an examination by a specialist, a medical record was not systematically drawn up (Dr Vellutini, who at the time was an ear, nose and throat specialist at the hospital, when contacted by my department in connection with your case, was not able to provide any further information which he might have remembered).

(c) In fact it is highly probable that the X-ray or X-rays concerning you were (as continues to be the practice in respect of detainees who are not hospitalised) immediately handed over to the persons accompanying you to be given to the medical service of the prison, without a copy being kept at the hospital.

(d) Moreover - in the unlikely event of medical documents concerning you having been filed - the move to new premises of the former hospital and the opening of a new hospital, in 1985, involved the multiple transportation of a considerable volume of files and documents, which could inevitably have resulted in the files being disturbed.

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(e) The search for documents concerning Mr Moracchini and Mr Pieri was likewise fruitless.

In any event I find it hard to see how an action which, as you suggest, might be brought against Bastia Hospital, either in the form of an application for an interlocutory injunction or on the merits, would make it possible to discover medical documents, whose presence in the archives is, to say the least, highly improbable and which have been the subject of thorough, albeit unsuccessful, searches."

PROCEEDINGS BEFORE THE COMMISSION

70. In his application of 10 March 1987 to the Commission (no. 12850/87), Mr Tomasi relied on Articles 3, 6 para. 1 and 5 para. 3 (art. 3, art. 6-1, art. 5-3) of the Convention. He claimed that during his police custody he had suffered inhuman and degrading treatment; he also criticised the length of the proceedings which he had brought in respect of such treatment; he maintained finally that his detention on remand had exceeded a "reasonable time".

71. The Commission declared the application admissible on 13 March 1990. In its report of 11 December 1990 (Article 31) (art. 31), it expressed the view that there had been a violation of Article 3 (art. 3) (twelve votes to two), Article 6 para. 1 (art. 6-1) (thirteen votes to one) and Article 5 para. 3 (art. 5-3) (unanimously). The full text of its opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment*.

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* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 241-A of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

FINAL SUBMISSIONS TO THE COURT

72. In their memorial, the Government asked the Court "to find that in the present case there [had] been no violation of Articles 5 para. 3, 3 and 6 para. 1 (art. 5-3, art. 3, art. 6-1) of the Convention".

73. For their part, the applicant's lawyers requested the Court to

"State that Mr Tomasi was the victim, during his custody on police premises, of inhuman and degrading treatment in violation of the provisions of Article 3 (art. 3) of the Convention.

State that the proceedings brought by Mr Tomasi to obtain compensation for the damage suffered as a result of such treatment were not conducted within a reasonable time, in violation of the provisions of Article 6 para. 1 (art. 6-1) of the Convention.

State that, in detention on remand, Mr Tomasi was not tried within a reasonable time or released pending trial, in violation of the provisions of Article 5 para. 3 (art. 5-3) of the Convention.

Set at 2,376,588 francs the just satisfaction for the

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consequences suffered by Félix Tomasi as a result of the violation by the French authorities of Article 5 para. 3 (art. 5-3) of the Convention.

Set at 500,000 francs the just satisfaction for the consequences suffered by Félix Tomasi as a result of the violations by the French authorities of Articles 3 and 6 para. 1 (art. 3, art. 6-1) of the Convention.

State that the French Republic shall be liable for the costs, fees and expenses of the present proceedings, including defence fees calculated at 237,200 francs.

With all due reservations."

74. In his written observations the Delegate of the Commission invited the Court to reject as inadmissible the Government's objection under Article 26 (art. 26) of the Convention.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 PARA. 3 (art. 5-3)

75. According to the applicant, the length of his detention on remand infringed Article 5 para. 3 (art. 5-3), which is worded as follows:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article (art. 5-1-c), ... shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Government's preliminary objections

76. The Government raised two objections to the application's admissibility; they contended firstly that the applicant had failed to exhaust domestic remedies and secondly that he had lost the status of victim.

77. Referring to its settled case-law (see, as the most recent authority, the Drozd and Janousek v. France and Spain judgment of 26 June 1992, Series A no. 240, pp. 31-32, para. 100), the Court finds that it has jurisdiction to examine these objections, despite the Commission's view to the contrary in respect of the first objection.

1. Objection based on the failure to exhaust domestic remedies

78. The Government stressed, as they had done before the Commission, that Mr Tomasi had lodged his application with the Commission on 10 March 1987, and therefore even before having submitted a claim to the Compensation Board at the Court of Cassation, which he did on 18 April 1989 (see paragraphs 1 and 40 above). Since then, the compensation awarded on 8 November 1991 (see paragraph 42 above) had rendered the complaint made under Article 5 para. 3 (art. 5-3) of the Convention devoid of purpose.

79. Like the applicant and the Delegate of the Commission, the Court notes in the first place that the right to secure the ending of a deprivation of liberty is to be distinguished from the right to receive compensation for such deprivation. It further observes that Article 149 of the Code of Criminal Procedure made the award of

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compensation subject to the fulfilment of specific conditions not required under Article 5 para. 3 (art. 5-3): namely the adoption of "a decision finding that [the accused] has no case to answer or acquitting him" and the existence of "damage of a clearly exceptional and particularly serious nature" (see paragraph 40 above). Finally, Mr Tomasi lodged his application in Strasbourg after four years spent in detention.

The objection must therefore be dismissed.

2. Objection based on the loss of the status of victim

80. In the Government's contention the applicant has lost the status of "victim" within the meaning of Article 25 para. 1 (art. 25-1) of the Convention. By its decision of 8 November 1991 awarding him 300,000 French francs, the Compensation Board had acknowledged that a "reasonable time" had been exceeded and had made good the resulting damage.

The applicant disputed this view.

81. The Court notes at the outset that this submission was made for the first time before it at the hearing on 25 February 1992 and not within the time-limits laid down in Rule 48 para. 1 of the Rules of Court. It observes nevertheless that the Government filed their memorial before the adoption of the Compensation Board's decision, so that their submission cannot be regarded as out of time.

On the other hand, it is open to the same objections as the plea based on the failure to exhaust domestic remedies. It is therefore unfounded.

B. Merits of the complaint

82. Mr Tomasi considered the length of his detention on remand excessive; the Government denied this, but the Commission agreed with him.

83. The period to be taken into consideration began on 23 March 1983, the date of the applicant's arrest, and ended on 22 October 1988 with his release following the delivery of the Gironde assize court's judgment acquitting him (see paragraphs 8 and 39 above). It therefore lasted five years and seven months.

84. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the circumstances arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his applications for release and his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 para. 3 (art. 5-3).

The persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the validity of the continued detention, but, after a certain lapse of time, it no longer suffices; the Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds

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were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see, as the most recent authority, the Clooth v. Belgium judgment of 12 December 1991, Series A no. 225, p. 14, para. 36).

1. The grounds for continuing the detention

85. In order to reject Mr Tomasi's applications for release, the investigating authorities put forward - separately or together - four main grounds: the seriousness of the alleged offences; the protection of public order; the need to prevent pressure being brought to bear on the witnesses or to avoid collusion between the co-accused; and the danger of the applicant's absconding.

(a) Seriousness of the alleged offences

86. The investigating judges and the indictments divisions stressed the particular or exceptional gravity of the offences of which the applicant was accused (see paragraphs 22, 31, 34, 35 and 36 above).

87. The applicant did not deny this, but he regarded it as not sufficient to justify pre-trial detention over such a long period of time, in the absence of grounds for suspecting him other than his membership of a nationalist movement. His period of detention corresponded to the term of imprisonment that would actually be served by a person sentenced to more than ten years' imprisonment.

88. The Government emphasised the consistent nature of the statements of a co-accused, Mr Moracchini, implicating Mr Tomasi in the preparation and organisation of the attack.

89. The existence and persistence of serious indications of the guilt of the person concerned undoubtedly constitute relevant factors, but the Court considers, like the Commission, that they cannot alone justify such a long period of pre-trial detention.

(b) Protection of public order

90. The majority of the courts in question expressed forcefully, and in very similar terms, the need to protect public order from the prejudice caused by the offences of which the applicant was accused (see paragraphs 16, 22, 34, 35 and 36 above).

The Government endorsed this reasoning, which was challenged by the applicant and the Commission.

91. The Court accepts that, by reason of their particular gravity and public reaction to them, certain offences may give rise to public disquiet capable of justifying pre-trial detention, at least for a time.

In exceptional circumstances - and subject, obviously, to there being sufficient evidence (see paragraph 84 above) - this factor may therefore be taken into account for the purposes of the Convention, in any event in so far as domestic law recognises - as in Article 144 of the French Code of Criminal Procedure - the notion of prejudice to public order caused by an offence. However, this ground can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the accused's release would actually prejudice public order. In addition, detention will continue to be legitimate only if public order remains actually threatened; its continuation cannot be used to anticipate a

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custodial sentence (see, as the most recent authority, the Kemmache v. France judgment of 27 November 1991, Series A no. 218, p. 25, para. 52).

In the present case, the investigating judges and the indictments divisions assessed the need to continue the deprivation of liberty from a purely abstract point of view, merely stressing the gravity of the offences (see, mutatis mutandis, the same judgment, p. 25, para. 52) or noting their effects. However, the attack against the Foreign Legion rest centre was a premeditated act of terrorism, responsibility for which was claimed by a clandestine organisation which advocated armed struggle. It had resulted in the death of one man and very serious injuries to another. It is therefore reasonable to assume that there was a risk of prejudice to public order at the beginning, but it must have disappeared after a certain time.

(c) Risk of pressure being brought to bear on the witnesses and of collusion between the co-accused

92. Several judicial decisions adopted in this case were based on the risk of pressure being brought to bear on the witnesses - the Poitiers indictments division even referred to a "campaign of intimidation" - and that of collusion between the co-accused; they did not, however, give any details concerning such risks (see paragraphs 16, 22 and 35 above).

93. According to the Government, the threats against Mr Moracchini had made it impossible to consider releasing Mr Tomasi. Mr Tomasi would have been able to increase the effectiveness of the pressure brought to bear on Mr Moracchini, who had been at the origin of the prosecution and who had tried to commit suicide.

94. The applicant denied this, whereas the Commission did not express a view.

95. In the Court's opinion, there was, from the outset, a genuine risk that pressure might be brought to bear on the witnesses. It gradually diminished, without however disappearing completely.

(d) Danger of the applicant's absconding

96. The Government contended that there had been a danger that the applicant would abscond. They invoked the seriousness of the sentence which Mr Tomasi risked. They also drew support for their view from the escape of Mr Pieri, who, facing prosecution for the same offences as the applicant and having like him always protested his innocence, had evaded recapture for three and a half years. Finally, they stressed the special circumstances of the situation in Corsica.

97. The applicant replied that he had been capable of providing sufficient guarantees that he would appear for trial; these guarantees resided in his status as a shopkeeper, his clean police record and the fact that he was of good repute.

98. The Court notes in the first place that the reasoning put forward by the Government in this respect did not appear in the contested judicial decisions. The latter were admittedly based for the most part on the need to ensure that Mr Tomasi remained at the disposal of the judicial authorities (see paragraphs 16, 22, 31 and 35 above), but only one of them - the decision of the Poitiers

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indictments division of 22 May 1987 - referred to a specific element in this connection: the help which members of the ex-FLNC could have given the applicant to enable him to evade trial (see paragraph 35 above).

In addition, the Court points out that the danger of absconding cannot be gauged solely on the basis of the severity of the sentence risked; it must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see, inter alia, the Letellier v. France judgment of 26 June 1991, Series A no. 207, p. 19, para. 43). In this case, the decisions of the judicial investigating authorities contained scarcely any reason capable of explaining why, notwithstanding the arguments advanced by the applicant in his applications for release, they considered the risk of his absconding to be decisive and why they did not seek to counter it by, for instance, requiring the lodging of a security and placing him under court supervision.

(e) Recapitulation

99. In conclusion, some of the reasons for dismissing Mr Tomasi's applications were both relevant and sufficient, but with the passing of time they became much less so, and it is thus necessary to consider the conduct of the proceedings.

2. Conduct of the proceedings

100. According to the applicant, the case was not at all complex; indeed the investigation had been completed as early as 18 October 1983, the date of the recapitulatory examination (see paragraph 12 above). However, there had been numerous errors and omissions on the part of the judicial authorities. In particular, the public prosecutor had refused to make submissions (réquisitions), requested investigative measures which had already been carried out, asked for the transfer of jurisdiction from the Bastia courts, instituted proceedings incorrectly in a court which lacked jurisdiction and placed the accused at a considerable distance from the investigating authority. The applicant acknowledged that the Law of 30 December 1986 had complicated the situation by making the Law of 9 September 1986 applicable to cases already pending, but by that time Mr Tomasi had been in detention for nearly four years. He complained that he had been questioned by an investigating judge only once in five years, on 5 September 1985 in Bordeaux (see paragraph 19 above).

On the subject of his own conduct, he pointed out that he had lodged twenty-one of his twenty-three applications for release after his recapitulatory examination (see paragraphs 14, 21, 31 and 33-36 above) and that his appeal on points of law against the decision of the Bordeaux indictments division of 27 May 1986 had led to the decision being quashed for infringement of the rights of the defence (see paragraph 25 above).

The Commission essentially agreed with the applicant's position.

101. The Government, for their part, did not consider the length of the detention in question unreasonable. They stressed in the first place the complexity of the process of indicting the applicant and his three co-accused, owing to the operation of the Law of 30 December 1986 and the joint jurisdiction of the indictments divisions of Poitiers and Bordeaux (see paragraphs 17-18 and 24-30

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above). They also pointed to the rhythm at which measures had been taken in the proceedings as showing that the authorities had consistently displayed due diligence, the two delays in the investigation being the result of the relinquishment of jurisdiction by the Bastia judge and the application of the Law of 30 December 1986 (ibid.). They criticised Mr Tomasi for having filed several appeals to the Court of Cassation, in particular against the first committal decision delivered on 27 May 1986 at Bordeaux (see paragraph 25 above), which, they contended, had substantially delayed the opening of the trial. Finally they emphasised the large number of applications for release lodged by the applicant and expressed the view that he was partly responsible for the length of his detention.

102. The Court fully appreciates that the right of an accused in detention to have his case examined with particular expedition must not unduly hinder the efforts of the courts to carry out their tasks with proper care (see, inter alia, mutatis mutandis, the Toth v. Austria judgment of 12 December 1991, Series A no. 224, pp. 20-21, para. 77). The evidence shows, nevertheless, that in this case the French courts did not act with the necessary promptness. Moreover, the principal public prosecutor at the Court of Cassation acknowledged this in his opinion of 5 June 1991 before the Compensation Board: the investigation "could have been considerably shortened without the various delays noted", in particular from November 1983 to January 1985 and from May 1986 to April 1988 (see paragraph 41 above). Accordingly, the length of the contested detention would not appear to be essentially attributable either to the complexity of the case or to the applicant's conduct.

3. Conclusion

103. There has therefore been a violation of Article 5 para. 3 (art. 5-3).

II. ALLEGED VIOLATION OF ARTICLE 3 (art. 3)

104. Mr Tomasi claimed to have suffered during his period of custody at Bastia police station ill-treatment incompatible with Article 3 (art. 3), according to which:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Government's preliminary objection

105. The Government pleaded the applicant's failure to exhaust his domestic remedies. They argued that he could have brought an action for damages in the civil courts against the State alleging culpable conduct on the part of its officials in the performance of their duties.

106. The only submission concerning the failure to exhaust domestic remedies raised by the Government before the Commission in the context of Article 3 (art. 3) related to a completely different matter, namely the claim that the filing of an application in Strasbourg was premature as no decision on the merits had been reached in the French courts. The Court, like the Delegate of the Commission, concludes from this that the Government are estopped from relying on their objection.

B. Merits of the complaint

107. In the circumstances of this case Mr Tomasi's complaint

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raises two issues, which are separate although closely linked: firstly that of the causal connection between the treatment which the applicant allegedly suffered during his police custody and the injuries noted subsequently by the investigating judge and the doctors; and, secondly and if necessary, the gravity of the treatment inflicted.

1. The causal connection between the treatment complained of and the injuries noted

108. According to the applicant, the observation made on 25 March 1983 by the Bastia investigating judge and the reports drawn up by various doctors at the end of his police custody (see paragraphs 45, 47, 48 and 50 above) confirmed his statements, even though it was, he said, to be regretted that the prison authorities had failed to communicate the X-rays effected on 2 April 1983 at Bastia Hospital (see paragraph 68 above). His body had borne marks which had only one origin, the ill-treatment inflicted on him for a period of forty odd hours by some of the police-officers responsible for his interrogation: he had been slapped, kicked, punched and given forearm blows, made to stand for long periods and without support, hands handcuffed behind the back; he had been spat upon, made to stand naked in front of an open window, deprived of food, threatened with a firearm and so on.

109. The Government acknowledged that they could give no explanation as to the cause of the injuries, but they maintained that they had not resulted from the treatment complained of by Mr Tomasi. The medical certificates showed, in their opinion, that the slight bruises and abrasions noted were totally inconsistent with the acts of violence described by the applicant; the certificate of the Chief Medical Officer of Bastia Prison of 4 July 1989 had been drawn up a long time after the event and was in complete contradiction with the earlier certificates. The chronology of the interrogation sessions, which had not been contested by the applicant, in no way corresponded to the allegations. Finally, the five other persons in police custody at the time had neither noticed nor heard anything, and although one of them referred to Mr Tomasi's losing a tooth, this fact was not mentioned by a doctor until six years later. In short, a clear doubt subsisted, which excluded any presumption of the existence of a causal connection.

110. Like the Commission, the Court bases its view on several considerations.

In the first place, no one has claimed that the marks noted on the applicant's body could have dated from a period prior to his being taken into custody or could have originated in an act carried out by the applicant against himself or again as a result of an escape attempt.

In addition, at his first appearance before the investigating judge, he drew attention to the marks which he bore on his chest and his ear; the judge took note of this and immediately designated an expert (see paragraphs 45 and 48 above).

Furthermore, four different doctors - one of whom was an official of the prison authorities - examined the accused in the days following the end of his police custody. Their certificates contain precise and concurring medical observations and indicate dates for the occurrence of the injuries which correspond to the period spent in custody on police premises (see paragraphs 47, 48 and 50 above).

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111. This conclusion makes it unnecessary for the Court to inquire into the other acts which it is claimed the officials in question carried out.

2. The gravity of the treatment complained of

112. Relying on the Ireland v. the United Kingdom judgment of 18 January 1978 (Series A no. 25), the applicant maintained that the blows which he had received constituted inhuman and degrading treatment. They had not only caused him intense physical and mental suffering; they had also aroused in him feelings of fear, anguish and inferiority capable of humiliating him and breaking his physical or moral resistance.

He argued that special vigilance was required of the Court in this respect in view of the particular features of the French system of police custody, notably the absence of a lawyer and a lack of any contact with the outside world.

113. The Commission stressed the vulnerability of a person held in police custody and expressed its surprise at the times chosen to interrogate the applicant. Although the injuries observed might appear to be relatively slight, they nevertheless constituted outward signs of the use of physical force on an individual deprived of his liberty and therefore in a state of inferiority. The treatment had therefore been both inhuman and degrading.

114. According to the Government, on the other hand, the "minimum level of severity" required by the Court's case-law (see the Ireland v. the United Kingdom judgment cited above and the Tyrer v. the United Kingdom judgment of 25 April 1978, Series A no. 26) had not been attained. It was necessary to take into account not only that the injuries were slight, but also the other facts of the case: Mr Tomasi's youth and good state of health, the moderate length of the interrogations (fourteen hours, three of which were during the night), "particular circumstances" obtaining in Corsica at the time and the fact that he had been suspected of participating in a terrorist attack which had resulted in the death of one man and grave injuries to another. In the Government's view, the Commission's interpretation of Article 3 (art. 3) in this case was based on a misunderstanding of the aim of that provision.

115. The Court cannot accept this argument. It does not consider that it has to examine the system of police custody in France and the rules pertaining thereto, or, in this case, the length and the timing of the applicant's interrogations. It finds it sufficient to observe that the medical certificates and reports, drawn up in total independence by medical practitioners, attest to the large number of blows inflicted on Mr Tomasi and their intensity; these are two elements which are sufficiently serious to render such treatment inhuman and degrading. The requirements of the investigation and the undeniable difficulties inherent in the fight against crime, particularly with regard to terrorism, cannot result in limits being placed on the protection to be afforded in respect of the physical integrity of individuals.

3. Conclusion

116. There has accordingly been a violation of Article 3 (art. 3).

III. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

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117. The applicant finally complained of the time taken to examine his complaint against persons unknown, lodged together with an application to join the proceedings as a civil party, in respect of the ill-treatment which he had suffered during his police custody. He relied on Article 6 para. 1 (art. 6-1), which is worded as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Government's preliminary objection

118. The Government contended, as they had done before the Commission, that the applicant had failed to exhaust his domestic remedies, in so far as he had not brought an action against the State for compensation pursuant to Article 781-1 of the Code of Judicial Organisation.

119. The Court confines itself to observing that this submission is out of time having been made for the first time before it at the hearing of 25 February 1992, and not within the time-limits laid down in Rule 48 para. 1 of the Rules of Court.

B. Merits of the complaint

1. Applicability of Article 6 para. 1 (art. 6-1)

120. In the Government's view, the contested proceedings did not fall within the scope of the notion of "determination of ... civil rights and obligations". By filing an application to join the proceedings as a civil party, the person who claimed to be injured by a criminal offence set in motion the prosecution or associated himself with proceedings which had already been brought by the prosecuting authority. He sought to secure the conviction and sentencing of the perpetrator of the offence in question and did not claim any pecuniary reparation. In other words, an investigation opened upon the filing of such an application concerned the existence of an offence and not that of a right.

121. Like the applicant and the Commission, the Court cannot accept this view.

Article 85 of the Code of Criminal Procedure provides for the filing of a complaint with an application to join the proceedings as a civil party. According to the case-law of the Court of Cassation (Crim. 9 February 1961, Dalloz 1961, p. 306), that provision simply applies Article 2 of that Code which is worded as follows:

> "Anyone who has personally suffered damage directly caused by an offence [crime, délit or contravention] may institute civil proceedings for damages.
>
> ..."

The investigating judge will find the civil application admissible - as he did in this instance - provided that, in the light of the facts relied upon, he can presume the existence of the damage alleged and a direct link with an offence (ibid.).

The right to compensation claimed by Mr Tomasi therefore depended on the outcome of his complaint, in other words on the conviction of the perpetrators of the treatment complained of. It

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was a civil right, notwithstanding the fact that the criminal courts had jurisdiction (see, mutatis mutandis, the Moreira de Azevedo v. Portugal judgment of 23 October 1990, Series A no. 189, p. 17, para. 67).

122. In conclusion, Article 6 para. 1 (art. 6-1) was applicable.

2. Compliance with Article 6 para. 1 (art. 6-1)

123. It remains to establish whether a "reasonable time" was exceeded. The applicant and the Commission considered that it had been, whereas the Government denied this.

(a) Period to be taken into consideration

124. The period to be taken into consideration began on 29 March 1983, the date on which Mr Tomasi filed his complaint; it ended on 6 February 1989, with the delivery of the Court of Cassation's judgment declaring the applicant's appeal from the Bordeaux indictments division's decision inadmissible (see paragraphs 46 and 67 above). It therefore lasted more than five years and ten months.

(b) Reasonableness of the length of the proceedings

125. The reasonableness of the length of proceedings is to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case, which in this instance call for an overall assessment.

A reading of the decisions given in these proceedings (see paragraphs 63, 66 and 67 above) shows that the case was not a particularly complex one. In addition, the applicant hardly contributed to delaying the outcome of the proceedings by challenging in the Bordeaux indictments division the decision finding no case to answer and by requesting that division to order a further inquiry (see paragraph 64 above). Responsibility for the delays found lies essentially with the judicial authorities. In particular, the Bastia public prosecutor allowed more than a year and a half to elapse before asking the Court of Cassation to designate the competent investigating authority (see paragraphs 57-58 above). The Bordeaux investigating judge heard Mr Tomasi only once and does not seem to have carried out any investigative measure between March and September 1985, and then between January 1986 and January 1987 (see paragraphs 59-61 above).

There has accordingly been a violation of Article 6 para. 1 (art. 6-1).

IV. APPLICATION OF ARTICLE 50 (art. 50)

126. According to Article 50 (art. 50):

> "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 the applicant claimed compensation for damage and the reimbursement of costs.

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A. Damage

127. Mr Tomasi distinguished three categories of damage:

(a) pecuniary damage of 900,000 francs deriving from the violation of Article 5 para. 3 (art. 5-3), corresponding to loss of salary (600,000 francs) and of commercial income (300,000 francs);

(b) damage assessed at a lump sum of 200,000 francs and payable, again in connection with Article 5 para. 3 (art. 5-3), in respect of the thirty-two visits made by his family to the continent in order to see him in prison;

(c) non-pecuniary damage assessed at 1,500,000 francs, namely 1,000,000 for the violation of Article 5 para. 3 (art. 5-3) and 500,000 for the breach of Articles 3 and 6 (art. 3, art. 6).

128. In the Government's view, the Compensation Board has already compensated any damage linked to the excessive length of the pre-trial detention. If the Court were to find a violation of Article 6 para. 1 and Article 3 (art. 6-1, art. 3), its judgment would provide sufficient just satisfaction.

129. The Delegate of the Commission recommended the payment of a sum covering non-pecuniary and pecuniary damage, but left it to the Court to assess the quantum of such an award.

130. The Court finds that the applicant sustained undeniable non-pecuniary and pecuniary damage. Taking into account the various relevant considerations, including the Compensation Board's decision, and making an assessment on an equitable basis in accordance with Article 50 (art. 50), it awards him 700,000 francs.

B. Costs and expenses

131. Mr Tomasi also claimed the reimbursement of his costs and expenses. For the proceedings before the French courts, he sought 276,500 francs (Mr Leclerc and Mr Lachaud: 141,500 francs; Mr Stagnara: 100,000 francs; Mr Boulanger: 5,000 francs; Mrs Waquet: 30,000 francs.). In respect of the proceedings before the Convention organs, he requested 237,200 francs.

132. The Government and the Delegate of the Commission did not express a view on the first amount. As regards the second, the Government referred to decisions in cases concerning France, whereas the Commission left the matter to be determined by the Court.

133. Making an assessment on an equitable basis and having regard to the criteria which it applies in this field, the Court awards the applicant an overall amount of 300,000 francs.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary objections;

2. Holds that there has been a violation of Article 5 para. 3, Article 3 and Article 6 para. 1 (art. 5-3, art. 3, art. 6-1);

3. Holds that the respondent State is to pay to the applicant, within three months, 700,000 (seven hundred thousand) French francs for damage and 300,000 (three hundred thousand) francs in respect of costs and expenses;

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4. 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 27 August 1992.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the concurring opinion of Mr De Meyer is annexed to this judgment.

Initialled: R. R.

Initialled: M.-A. E.

CONCURRING OPINION OF JUDGE DE MEYER

(Translation)

It would be unfortunate if paragraphs 107 to 115 of the judgment were to leave the impression that blows inflicted on a suspect in police custody are prohibited only in so far as they exceed a certain "minimum level of severity"1, for example on account of the "large number" of such blows and their "intensity"2.

Any use of physical force in respect of a person deprived of his liberty which is not made strictly necessary as a result of his own conduct3 violates human dignity and must therefore be regarded as a breach of the right guaranteed under Article 3 (art. 3) of the Convention4.

At the most the severity of the treatment is relevant in determining, where appropriate, whether there has been torture5.

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1 Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 162. See also paragraphs 91 and 102 of the Commission's report in the present case.

2 Paragraph 115 of the present judgment.

3 For instance in the case of an "escape attempt" or "an act carried out ... against himself" (possibilities envisaged at paragraph 110 of the judgment) or against another person.

4 Even if the violence consists only of "slaps or blows of the hand to the head or face". It is somewhat surprising that the Commission felt able to condone such "roughness"; see in this connection its reports of 1969 in the Greek case, Yearbook, vol. 12, p. 501, and of 1976 in the Ireland v. the United Kingdom case, Series B no. 23-I, pp. 388-389.

5 Torture constitutes "an aggravated ... form of cruel, inhuman or degrading treatment or punishment": Article 1 para. 1 of Resolution 3452 (XXX), adopted by the General Assembly of the United Nations on 9 December 1975. See also the Ireland v. the United Kingdom judgment, cited above, pp. 66-67, para. 167, and the separate opinions of Judges Zekia, O'Donoghue and Evrigenis, ibid., pp. 97, 106 and 136, as well as the above-mentioned Commission

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reports in the Greek case, p. 186, and the Ireland v. United Kingdom case, p. 388.
