

In the case of Clooth v. Belgium*,

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

Mr R. Ryssdal, President,
Mrs D. Bindschedler-Robert,
Mr F. Gölcüklü,
Mr C. Russo,
Mr A. Spielmann,
Mr J. De Meyer,
Mrs E. Palm,
Mr A.N. Loizou,
Mr J.M. Morenilla,

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

Having deliberated in private on 28 June and 27 November 1991,

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

Notes by the Registrar

* The case is numbered 49/1990/240/311. 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 on 12 October 1990 by the European Commission of Human Rights ("the Commission"), 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. 12718/87) against the Kingdom of Belgium lodged with the Commission under Article 25 (art. 25) by a Belgian national, Mr Serge Clooth, on 12 February 1987.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Belgium 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 Article 5 para. 3 (art. 5-3) of the Convention.

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

3. The Chamber to be constituted included ex officio Mr J. De

Meyer, the elected judge of Belgian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 26 October 1990, 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. Gölcüklü, Mr C. Russo, Mr A. Spielmann, Mrs E. Palm, Mr A.N. Loizou and Mr J.M. Morenilla (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Belgian Government ("the Government"), the Delegate of the Commission and the applicant's lawyer on the need for a written procedure (Rule 37 para. 1). In accordance with the order made in consequence, the Registrar received the applicant's memorial on 28 February 1991 and the Government's memorial on 6 March. By letter of 25 March, the Secretary to the Commission indicated 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 had directed on 31 January 1991 that the oral proceedings should open on 24 June 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

Mr J. Lathouwers, Legal Officer, Ministry of Justice, Mr F. Huisman, avocat,	Agent, Counsel;
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(b) for the Commission

Mr J.-C. Soyer,	Delegate;
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(c) for the applicant

Mr Y. de Gratie, avocat,	Counsel.
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The Court heard addresses by Mr Huisman for the Government, by Mr Soyer for the Commission and by Mr de Gratie for the applicant, as well as their answers to its questions.

AS TO THE FACTS

I. The particular circumstances of the case

7. Serge Clooth, who is a Belgian national born in 1964, currently resides at Angleur (Belgium).

8. On 13 September 1984 Mr Eloy, investigating judge at the Brussels tribunal de première instance (first-instance court) remanded him in custody. The applicant was one of the suspects in a murder and arson case, known as the "mushroom house case" after the abandoned building where the police had found, in February of that year, the partly burned and mutilated corpse of a teenage girl. The German authorities - who had detained Mr Clooth in connection with another murder carried out on their territory, but then released him for lack of evidence - had extradited him to Belgium shortly before.

At the time, Mr Clooth's criminal record showed previous convictions for attempted aggravated theft, for which he had been

sentenced to two months' imprisonment (judgment of 30 June 1983 of the Liège Criminal Court, upheld on 26 June 1985 by the Liège Court of Appeal), and for desertion, for which he had been sentenced to one month's military detention suspended (judgment of 24 November 1983 of the Liège Military Court).

A. The investigation

9. Judge Eloy conducted the investigation of the case until his departure on indefinite leave on 30 September 1985. Prior to that he had been absent from his chambers either on health grounds or on leave from 4 March to 14 June, from 25 July to 27 August and from 28 August to 27 September 1985. He had ordered his last investigative measure - the fourteenth - on 29 January 1985. By that time, the investigators had drawn up 104 reports and carried out 86 interviews or follow-up interviews as well as several searches, seizures and confrontations. The investigating judge had himself questioned seven persons and sent letters rogatory to the German authorities.

10. On 14 September 1984 he had instructed two psychiatric experts to examine Mr Clooth. After several reminders, they submitted a report on 21 June 1985 in which they concluded that the applicant suffered from serious mental disturbance which made it impossible for him to control his actions. They stated that a "judicious application of the law should take account of the need for him to be placed in long term psychiatric care". On 23 September 1986 one of them confirmed this diagnosis in every respect. At the request of the applicant's lawyer, another expert was appointed on 4 May 1987; in a report of 10 June, he referred to a chronic disturbance of Mr Clooth's personality, which made the latter dangerous.

11. Until the appointment on 1 October 1985 of Judge Van Espen, two investigating judges replaced Judge Eloy in turn (see paragraph 9 above). On 26 March, 6 and 15 May, 6 and 9 August and 9 September 1985, they ordered interviews to be effected, two of which had been requested by the applicant's lawyer. From 26 March to 17 October 1985, the date of the first investigative measure ordered by Judge Van Espen, the investigators forwarded nine reports. However, no document was added to the file from 27 March to 5 May 1985.

12. The steps taken by the investigating judges from 14 September 1984 to 17 October 1985 included twenty orders for investigative measures, seven interviews of accused, four appointments of experts, four sets of letters rogatory, two decisions to prefer charges and a warrant for a search and a body search.

During this period, the police effected inter alia 127 interviews or follow-up interviews, thirteen confrontations, a search and a seizure, they detained one person for questioning, carried out two interceptions and made one "administrative arrest"; they also made at least twenty-nine requests for information and verifications. Over the same period twenty-five expert reports were drawn up. Mr Clooth was questioned sixteen times, including three times at his request, and confronted seven times with other persons; he altered his version of events or of how he had spent the time in question eleven times.

13. On 31 July or 1 August 1986 the Brussels police obtained the statement of a person who claimed that he had discovered, from another source, the name of the murderer. The witness demanded that he should be allowed to remain anonymous and refused to sign his statement. When the text of the statement was passed to the police investigators, they asked that the informant's identity be

disclosed; this entailed inquiries which were concluded on 6 January 1987.

At this point, the investigative measures carried out by the investigating judge since 31 July 1986 included at least one interview of Mr Clooth, the issue of a search warrant, an inspection of the site and seven orders for specific investigative measures. For their part, the police had drawn up thirty-one reports and effected, among other things, a search, a seizure, made fourteen requests for information or verifications and carried out twenty-three interviews or follow-up interviews, including one of Mr Clooth, requested, in particular, by the latter himself. Judge Van Espen had also ordered the interview after the applicant had changed his version of events at his monthly appearance before the chambre du conseil (Review Chamber). According to the Government, and they have not been contradicted on this point by him, the applicant gave twenty different versions in the course of the investigation.

14. By 17 November 1987, the date of Mr Clooth's release (see paragraph 30 below), more than 175 reports and notes had been drawn up since Judge Van Espen had taken over the case (see paragraph 11 above).

B. The proceedings before the investigation organs

15. On 17 September 1984 the chambre du conseil of the Brussels tribunal de première instance had confirmed the detention order of 13 September (see paragraph 8 above).

16. On 12 October it decided that the applicant should remain in detention on remand. In respect of the grave and exceptional circumstances on which the lawfulness of such a measure was conditional (see paragraph 32 below), it cited the seriousness of the acts threatening public safety of which Mr Clooth was accused, the danger to society which he represented, the needs of the investigation and the risks of collusion.

17. Whereas the applicant's principal co-accused were released between October and December 1984, the same chambre du conseil extended the contested detention by one month on 29 October, 28 November and 28 December 1984, and then on 28 January, 27 February, 27 March, 26 April, 23 May and 21 June 1985. On each occasion it deemed that the grave and exceptional circumstances affecting public safety, which it had noted on 12 October 1984 (see paragraph 16 above), required the continuation of the incarceration.

On an appeal by the applicant, the indictments division (chambre des mises en accusation) of the Brussels Court of Appeal confirmed the order of 21 June on 5 July. In its view, Mr Clooth's numerous confessions, although they had all been retracted, gave grounds for fearing that he would be the object of reprisals from his circle of acquaintances; as his latest version of events had not been verified and as no conclusions had been reached regarding his mental state, his release from prison would moreover create a "serious danger of public safety" and would risk impeding the investigation.

18. Invoking the same grounds, simply by reference to the decision of 5 July (see paragraph 17 above), the chambre du conseil extended the contested measure on 19 July, 19 August, 18 September, 18 October, 18 November and 18 December 1985, then on 17 January, 14 February, 14 March, 14 April, 14 May and 13 June 1986.

19. On 11 July 1986 it made an order further extending the detention, stating the following grounds:

"... the crime being investigated is of exceptional gravity and is a serious threat to public safety; the accused has made admissions and retracted them, but the precise details that he has given provide grounds for suspecting that he committed the crime; the investigation is continuing, the most recent investigative measures dating from May and June 1986, effected with due respect for the rights of the accused who, by retracting his confessions, has compelled the investigators to undertake inquiries in every possible direction in order to identify other perpetrators, co-perpetrators or accomplices; in view of the complexity of the inquiry and the foregoing considerations, Article 5 para. 3 (art. 5-3) of the Convention on Human Rights has in no way been infringed"

On 25 July the Brussels indictments division dismissed the applicant's appeal in the following terms:

"There are serious indications that the accused is guilty of participating in a murder and an act of arson; these particularly serious offences show a total disregard for human life;

This dangerous state of mind, combined with the finding that the accused was at the material time and is still in a serious state of mental disturbance, making him incapable of controlling his actions and requiring long-term psychiatric care, constitutes a serious danger to public safety inasmuch as it is to be feared that the accused, if released, would commit similar offences;

The accused's numerous statements and their varying content have made the investigation especially difficult and have necessitated further extensive inquiries;

It is wrongly asserted that there has been a violation of Article 5 para. 3 (art. 5-3) of the Convention for the Protection of Human Rights in this case, more specifically on the ground that the investigation has not progressed any further in recent months;

The evidence contradicts this assertion"

Mr Clooth appealed to the Court of Cassation. He relied inter alia on Article 5 para. 3 (art. 5-3) of the Convention and criticised the indictments division for not having answered two complaints, one based on the lack of investigative measures during the months following the departure of Judge Eloy, and the other on the belated submission of the expert's report (see paragraphs 9-12 above).

In a decision dismissing the appeal on 8 October 1986, the Court of Cassation took the view that "having ... stated the reasons for the length of the investigation, the judgment [had] impliedly but clearly [decided] that any delays in the completion of the investigative measures referred to in the appeal submissions had not had an effect on the length of the investigation so that the Court of Appeal was not obliged to consider whether or not such delays were justified"

20. In the meantime the chambre du conseil had extended the applicant's detention on 11 August and 10 September and the indictments division had dismissed the applicant's appeals on 22 August and 25 September.

The latter decision noted, among other things, that the innumerable investigative measures, inquiries and interviews, made necessary by the seriousness of the offences and by the applicant's numerous and changing statements, justified his being kept in detention. The very attitude of the accused showed that his release would have been liable to compromise the conduct of the investigation; in addition, according to the psychiatric expert, he constituted a

"particular danger to society".

The applicant filed an appeal in the Court of Cassation, which was dismissed on 3 December 1986.

21. On 10 October the chambre du conseil had ordered a further extension of the detention, confirmed on 22 October by the indictments division. In the latter's view, three recent reports attested to the fact that the investigation had been conducted with diligence since the decision of 25 September (see paragraph 20 above), whose grounds continued moreover to be valid.

On 7 January 1987 the Court of Cassation dismissed the applicant's appeal; it considered that the indictments division had satisfactorily answered the submissions and in particular those alleging a violation of Article 5 para. 3 (art. 5-3) on account of delays in the completion of important investigative measures, the lack of investigative measures from 13 May to 4 June and from 4 June to 31 July 1986 and the failure by the police to identify a witness (see paragraph 13 above).

22. On 10 November 1986, referring to the grounds of the decision of 22 October (see paragraph 21 above), the chambre du conseil again decided that the applicant should remain in detention. On appeal the indictments division confirmed the decision on 21 November; it took the view that a new version of events given by the accused had made it essential to carry out verifications, which were still in progress.

23. On 10 December 1986 and 9 January 1987 the chambre du conseil made other similar orders. They were founded on the decision of 21 November (see paragraph 22 above) and the indictments division upheld them on 24 December 1986 and 21 January 1987. On 6 February the chambre du conseil relied on that last decision in order to refuse once again to release the applicant.

24. On 20 March the indictments division dismissed the applicant's appeal against an extension ordered on 6 March by the chambre du conseil; it gave the following grounds:

"The factors peculiar to the case or to the accused's personality, specified in the decisions of 25 July 1986, 25 September 1986, 22 October 1986 and 21 November 1986, constitute grave and exceptional circumstances, which still obtain and which concern public safety to the extent that it is necessary for the detention on remand to be continued"

25. The chambre du conseil gave the same grounds in an order of 6 April 1987 keeping Mr Clooth in detention. On 16 April the indictments division dismissed his appeal. In addition to the risk of his absconding, it invoked the threats to public safety which stemmed in its view from the seriousness of the alleged offences and the applicant's mental state. It added that "the investigation has been continued with no interruptions whatsoever to date in spite of the successive confessions of the accused in different contexts and this attitude in itself fully explains the length of the detention".

26. On 4 May, 3 June and 3 July 1987 the chambre du conseil extended the detention further, basing its decisions on the reasoning set out in the judgments of 20 March and 16 April (see paragraphs 24 and 25 above). The applicant filed appeals against the orders of 4 May and 3 July; his appeals were dismissed by the indictments division on 15 May and 17 July. In the second decision, it stated that letters rogatory to Luxembourg were in the process of being executed and that a recent psychiatric report, dated 10 June 1987, had confirmed how deeply disturbed the

applicant's personality was and the danger that he might represent for others (see paragraph 10 above).

27. The same considerations led the chambre du conseil to extend the detention on 3 August and 2 September 1987 and the indictments division to confirm those decisions on 11 August and 16 September.

28. In written submissions of 11 July, 22 July, 24 September, 22 October 1986 and 16 April 1987, Mr Clooth complained on each occasion of considerable delays in the conduct of the inquiry and demanded his release in accordance with Article 5 para. 3 (art. 5-3) of the Convention. He contended that neither his personality nor the charges brought against him nor the interests of public safety could justify his continued incarceration.

29. On 2 October 1987 the chambre du conseil ordered Mr Clooth's provisional release, but on appeal by the public prosecutor the indictments division set aside this decision on 16 October 1987. It considered that the grave and exceptional circumstances affecting public safety, referred to in its decisions of 20 March and 16 April 1987 (see paragraphs 24 and 25 above), continued to make the applicant's detention necessary; in addition, the reasons relating to the applicant's mental state (see paragraph 26 above) subsisted.

On 23 December 1987 the Court of Cassation declared the applicant's appeal to be devoid of purpose as his detention had since come to an end.

30. On 2 November the chambre du conseil had in fact ordered Mr Clooth's release. The indictments division had upheld this decision on 17 November, on the ground that a reasonable time within the meaning of Article 5 para. 3 (art. 5-3) of the Convention had been exceeded. Nevertheless, the applicant remained in detention pursuant to a detention order made in connection with a robbery case.

31. On 6 November 1990 the chambre du conseil made an order finding that the applicant and his co-accused had no case to answer; this order subsequently became final.

II. Relevant domestic law

32. At the material time pre-trial detention was governed by a Law of 20 April 1874, which had been amended several times since its enactment. The principal provisions relevant to the present case were worded as follows:

Article 1

"After the examination, the investigating judge may issue a detention order where the offence is such as to entail a term of imprisonment (emprisonnement correctionnel) of three months or a heavier sentence.

If the accused is resident in Belgium, the judge may issue such an order only in grave and exceptional circumstances, where this measure is necessary in the interests of public safety.

... "

Article 2

"The detention order, in the case provided for in the second paragraph of the preceding Article, shall specify the grave and exceptional circumstances affecting public safety which justify the

arrest, indicating the factors peculiar to the case or to the accused's personality."

Article 4

"The detention order shall not remain in force, if in the five days following the examination, it is not confirmed by the chambre du conseil after hearing the report of the investigating judge and the views of the Crown prosecutor and the accused.

... ."

Article 5

"Where the chambre du conseil has not ruled on the charge in the month following the examination, the accused shall be released, unless the chambre du conseil, by a reasoned order, adopted unanimously, after hearing the views of the Crown prosecutor and the accused or his counsel, states that grave and exceptional circumstances affecting public safety require the continuation of the detention. The order shall specify such circumstances, indicating the factors peculiar to the case or to the personality of the accused.

The same procedure shall be followed at monthly intervals, if the chambre du conseil has not ruled on the charge by the end of a new month.

... ."

Article 19

"The accused and the prosecuting authority may appeal to the indictments division from the orders of the chambre du conseil made in the cases provided for in Articles 4, 5"

PROCEEDINGS BEFORE THE COMMISSION

33. In his application of 12 February 1987 to the Commission (no. 12718/87), Mr Clooth complained of the length of his detention on remand.

The Commission declared the application admissible on 9 May 1989. In its report of 10 July 1990 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 5 para. 3 (art. 5-3) of the Convention. The full text of the Commission's opinion is reproduced as an annex to this judgment*.

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 225 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

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

34. According to the applicant the length of his detention on remand was in breach of 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."

The Government contested this view, whereas the Commission subscribed to it.

A. Period to be taken into consideration

35. The period to be taken into consideration began on 13 September 1984, the date of Mr Clooth's arrest, and ended on 17 November 1987, with the decision of the indictments division confirming the applicant's release (see paragraphs 8 and 30 above). The fact that he remained in prison is not material here, as that was on account of other proceedings (see paragraph 30 above). The detention in question therefore lasted three years, two months and four days.

B. Reasonableness of the length of the detention

36. 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) of the Convention.

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 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 *Kemmache v. France* judgment of 27 November 1991, Series A no. 218, p. 36, para. 45).

37. In extending Mr Clooth's detention the investigation authorities relied essentially, in addition to the serious indications of his guilt, on the danger of repetition and the needs of the inquiry as well as the risks of collusion. Certain decisions also noted the danger that the applicant might abscond.

1. The danger of repetition

38. The Government stressed that in view of the applicant's mental disturbance and the atrociousness of the crime of which he was suspected, it could be feared that he would perpetrate other offences if he were to be released, in particular as all the psychiatric experts consulted considered him to be dangerous (see paragraph 10 above).

39. In the Commission's opinion, the *chambre du conseil* and the indictments division could legitimately have attached importance to such considerations, but only initially: once the conclusions of the psychiatrists were known, the courts in question should have taken measures more suited to Mr Clooth's psychological deficiencies.

40. The Court considers that the seriousness of a charge may lead the judicial authorities to place and leave a suspect in

detention on remand in order to prevent any attempts to commit further offences. It is however necessary, among other conditions, that the danger be a plausible one and the measure appropriate, in the light of the circumstances of the case and in particular the past history and the personality of the person concerned.

In the present case, the offences which had given rise to the applicant's previous convictions were not comparable, either in nature or in the degree of seriousness, to the charges preferred against him in the contested proceedings (see paragraph 8 above). In addition, the same expert report of 21 June 1985 which described Mr Clooth as dangerous mentioned the need for him to be taken into psychiatric care (see paragraph 10 above). Such conclusions, submitted more than nine months after the beginning of the detention, ought to have persuaded the competent courts not to extend it without an accompanying therapeutic measure.

The ground based on the risk of repetition did not therefore in itself justify the continuation of the detention after 21 June 1985.

2. The needs of the inquiry and the risks of collusion

41. According to the Government, Mr Clooth contributed considerably to rendering the facts more complicated by the number and changing nature of his statements. By repeatedly obliging the investigators to undertake new inquiries, he bore a large part of the responsibility for the length of the investigation. The atrociousness of the crimes in question led them to leave no avenue unexplored, as was shown by the voluminous criminal file, which contained more than 350 reports and notes. Furthermore, it was necessary to pre-empt any attempt at collusion or intimidation of witnesses.

42. The Commission considered that this argument, which was acceptable at the outset, became questionable after the first fifteen months of investigations, once numerous testimonies had been obtained and innumerable findings made. In its view, all the different versions given by the applicant gave rise not so much to a risk of the evidence being tampered with as to the need to pursue the investigation further. If there were no such risk, this need could justify only the extension of the investigation and not that of the deprivation of liberty.

43. The Court acknowledges that it was a very complicated case necessitating difficult inquiries. By his conduct (see paragraphs 12 -13 above), Mr Clooth considerably impeded and indeed delayed them. The authorities' belief that he should consequently be kept in detention in order to prevent him from disrupting the inquiry even more is easy to understand, at least at the outset.

In the long term, however, the requirements of the investigation do not suffice to justify the detention of a suspect: in the normal course of events the risks alleged diminish with the passing of time as the inquiries are effected, statements taken and verifications carried out.

44. In the present case, the orders or decisions, which, like those of 5 July 1985, 11 and 25 July, 25 September, 21 November 1986 and 17 July 1987, specified the cause or the purpose of the inquiries underway precluding the release of the applicant were rare (see paragraphs 17, 19, 20, 22 and 26 above). The majority of them merely mentioned, without more ado, the requirements of the investigation, when they were not simply confined to referring, by means of a stereotyped formula, to an earlier decision, adopted more than eleven months previously in one case (13 June 1986 to 5 July 1985, see paragraphs 17-18 above).

Where the needs of the investigation are invoked in such a general and abstract fashion they do not suffice to justify the continuation of detention.

45. In addition to this there were delays in the investigation.

It slowed down significantly from January to October 1985, on account in particular of the repeated changes of investigating judge (see paragraphs 9 and 11 above).

Furthermore, there were lengthy delays before the lodging of the first report of a psychiatric expert (see paragraph 10 above) and before the identification of the anonymous witness who had come forward in the summer of 1986 (see paragraph 13 above).

46. Moreover, the evidence does not show that the applicant was released only after the completion of certain specific investigative measures (see paragraphs 29-30 above); this suggests that the competent court could have ordered his release earlier.

3. The danger of absconding

47. When, on 16 April 1987, it confirmed the extension of the detention, the indictments division invoked, for the first time, the danger of the applicant's absconding. Its decision served as the basis for three subsequent orders (see paragraphs 25-26 above).

48. In the Government's contention, these fears were supported by the fact that Mr Clooth had been arrested in Germany and that Belgium had had to seek his extradition (see paragraph 8 above). Like the Commission, however, the Court considers that such fears had become immaterial by the time at which they were expressed, not less than thirty-one months after the applicant's arrest. In addition, the decisions referring thereto did not put forward any argument capable of showing that these fears were well-founded.

4. Conclusion

49. In the light of all these considerations, the Court finds that the length of Mr Clooth's detention on remand exceeded the reasonable time referred to in Article 5 para. 3 (art. 5-3).

II. APPLICATION OF ARTICLE 50 (art. 50)

50. According to the terms of 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."

The applicant claimed 1,520,000 Belgian francs for non-pecuniary damage and 607,030 francs for pecuniary damage, as well as 1,134,372 francs under the head of costs and expenses referable to the proceedings conducted in the national courts and then at Strasbourg.

51. The Government raised the objection *inter alia* that the applicant had not instituted proceedings for damages available under Belgian law to any person deprived of his liberty in circumstances contrary to Article 5 (art. 5) of the Convention.

The Delegate of the Commission observed that the wording of Article 50

(art. 50) recommended leaving to the national authorities responsibility for making good the consequences of a violation found.

52. Having regard to the circumstances of the case, the Court wishes to take into account the compensation that Mr Clooth may obtain under domestic law. As the question of the application of Article 50 (art. 50) is therefore not ready for decision, it should be reserved.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. Holds that the question of the application of Article 50 (art. 50) is not ready for decision;

accordingly,

(a) reserves the whole of the said question;

(b) invites the Government and the applicant to submit, within three months, their written observations thereon and, in particular, to notify the Court of any agreement reached between them;

(c) reserves the further procedure and delegates to the President of the Court the power to fix the same if need be.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 12 December 1991.

Signed: For the President
Alphonse SPIELMANN
Judge

Signed: Marc-André EISSEN
Registrar