

In the case of *Kemmache 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 F. Gölcüklü,
Mr L.-E. Pettiti,
Mr C. Russo,
Mr R. Bernhardt,
Mr S.K. Martens,
Mrs E. Palm,
Mr I. Foighel,
Mr R. Pekkanen,

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

Having deliberated in private on 21 March and 22 October 1991,

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

Notes by the Registrar

* The case is numbered 41/1990/232/298 and 53/1990/244/315. The first number in each of these two sets of numbers is the position on the list of cases referred to the Court in the relevant year (second number). The last two numbers in each set indicate the 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") in two stages, first on 11 July and then on 12 October 1990, on each occasion 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. 12325/86 and 14992/89) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr Michel Kemmache, on 1 August 1986 and 28 April 1989; the Commission did not order the joinder of the two applications.

2. The Commission's requests 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 requests was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under respectively Article 5 para. 3 and Article 6 para. 1 (art. 5-3, art. 6-1) of the Convention, specifically as regards the requirement of "reasonable time".

3. 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).

4. The Chamber to be constituted for the examination of the first of the above-mentioned cases 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 27 August 1990, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr C. Russo, Mr R. Bernhardt, Mr S.K. Martens, Mrs E. Palm, Mr I. Foighel and Mr R. Pekkanen (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

5. On 15 October 1990 Mr Ryssdal decided that this Chamber should also hear the second case and that it should examine both cases simultaneously (Rules 21 para. 6 and 37 para. 3). On 25 October the Chamber ordered the joinder of the two cases (Rule 37 para. 3 in fine).

6. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 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 para. 1). In accordance with the order made in consequence, the Registrar received the memorials of the applicant and the Government on 21 and 23 January 1991 respectively. On 11 February the applicant lodged a memorial in reply which, with the President's leave, was added to the documents before the Court (Rule 37 para. 1, second sub-paragraph). The Government replied thereto on 14 March. In a letter of 28 February the Secretary to the Commission informed the Registrar that the Delegate would make his observations at the hearing.

7. Having consulted, through the Registrar, those who would be appearing before the Court, the President had directed on 6 November 1990 that the oral proceedings should open on 19 March 1991 (Rule 38).

8. 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,
Miss M. Picard, magistrat, seconded to the Legal Affairs Directorate, Ministry of Foreign Affairs,	
Miss F. Travaillet, magistrat, seconded to the Criminal Affairs and Pardons Directorate, Ministry of Justice,	
Mr P. Chambu, Human Rights Division, Ministry of Foreign Affairs,	Counsel;

(b) for the Commission

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

Mrs C. Méral, avocate,	Counsel.
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The Court heard addresses by Mrs Belliard for the Government, by Mr Soyer for the Commission and by Mrs Méral for the applicant, as well as their replies to its questions. The representatives of the Government and the applicant produced various documents on the occasion of the hearing and subsequently.

AS TO THE FACTS

9. Mr Michel Kemmache, a French national, is currently serving an eleven year prison sentence. Previously he resided at Pantin where he was employed as a receptionist of a hotel company. He had at one time been the managing director of that company and, before that, the director of several companies in which he owned shares: these consisted of gambling clubs, hotels and restaurants. His criminal record showed three convictions, including a term of five years' imprisonment for aggravated theft.

I. The particular circumstances of the case

A. The proceedings

1. The investigation proceedings

(a) Investigation concerning the charges of importing counterfeit money into French territory and the use and unlawful circulation of counterfeit banknotes

10. On 6 July 1981 Mr Klaushofer, an Austrian national residing in Liechtenstein, and Mr Ceccio, an Italian living in Switzerland, were apprehended at Nice Airport as they were attempting to change a counterfeit one hundred US dollar banknote at one of the airport's banks. The two men were travelling in a car stolen in the Netherlands bearing a false Portuguese registration number. Their luggage was found to contain 4,500 counterfeit 100 US dollar banknotes and slips for wads of double that amount; on 8 July 1981 the two men were charged with importing counterfeit money into French territory and the use and unlawful circulation of counterfeit banknotes; they were remanded in custody.

Inquiries led the investigators to the applicant and to a Spanish national, Mr Hernandez, whom Mr Klaushofer and Mr Ceccio had allegedly met in Monaco through the intermediary of an Italian, Mr Caudullo, known for his criminal activities. Mr Kemmache was accordingly charged on 16 February 1983 with the same offences as the first two accused and in his turn remanded in custody (see paragraph 25 below).

11. On 24 February 1984 Mr Ceccio told the investigating judge that he had, on the instructions of his lawyer and in exchange for a sum of money paid by the applicant, untruthfully stated that he did not know the latter. The judge concerned summoned Mr Kemmache - who had in the meantime been released subject to court supervision (see paragraph 25 below) - in order to examine him on 13 March 1984, an interview which was postponed to 20 March 1984.

The applicant failed to appear on that date. One of his lawyers made a declaration to the investigating judge to the effect that he had received a telephone call from a person whose identity he could not reveal informing him that a motorway accident had prevented Mr Kemmache from appearing. However, a witness who was interviewed on 23 March, Mr Fernandez, stated that he and the applicant had arrived in Nice by road, without encountering any difficulties, in the evening of 19 March and that his travelling companion had indeed been in Nice the following day, until about 5 pm.

Whatever the truth of the matter, Mr Kemmache was again remanded in

custody on 22 March (see paragraph 26 below).

12. On 29 June 1984 the investigating judge made an order closing the investigation of the main offence and forwarded the file to the prosecuting authorities.

(b) Investigation concerning the charges of suborning a witness and conspiracy to suborn a witness

13. As a result of Mr Ceccio's statements (see paragraph 11 above), a second judicial investigation of Mr Kemmache and two other persons was opened on 18 June 1984, on charges of suborning a witness and conspiracy to suborn a witness.

On 20 February 1986 the investigating judge, after having questioned the applicant, charged him with conspiracy to suborn a witness. On 2 October 1986 he made an order concluding the investigation and sending the papers to the prosecuting authorities.

2. The trial proceedings

(a) The proceedings concerning the main offence (l'affaire criminelle)

14. On 28 August 1984 the indictments division (chambre d'accusation) of the Aix-en-Provence Court of Appeal ordered Mr Kemmache's indictment on charges of importing counterfeit money into French territory and of use and unlawful circulation of counterfeit banknotes and committed him for trial before the Alpes-Maritimes Assize Court. The applicant appealed on points of law and the Court of Cassation set aside this decision on 20 November 1984 on the ground that the indictments division had disregarded Articles 83 and 84 of the Code of Criminal Procedure by failing to find that the investigating judge who had replaced the first investigating judge, the latter having changed posts, had not been formally appointed.

15. The case was remitted to the indictments division of the Grenoble Court of Appeal which, on 7 January 1985, committed the applicant for trial in the Alpes-Maritimes Assize Court. The applicant appealed on points of law and the Court of Cassation set aside this decision on 26 March 1985 for failure to give sufficient reasons.

16. The case was again remitted to the indictments division of the Grenoble Court of Appeal which, sitting with a different panel of judges, on 15 May 1985 committed Mr Kemmache for trial in the Alpes-Maritimes Assize Court. However, on the applicant's appeal, the Court of Cassation set aside the decision on 17 July 1985 on the ground that the indictments division had infringed Article 202 of the Code of Criminal Procedure by relying on facts not included in the investigating judge's referral order, without having called for additional investigative measures or having had the applicant charged.

17. The case was remitted to the indictments division of the Lyon Court of Appeal, which on 13 August 1985 committed Mr Kemmache for trial before the Alpes-Maritimes Assize Court, charged with the offence (crime) of knowingly aiding and abetting the importation and use on French territory of counterfeit foreign banknotes and the related offence (délit) of unlawful circulation of such counterfeit banknotes within the customs area. On 29 October 1985 the Court of Cassation dismissed the applicant's appeal against the Court of Appeal's decision.

18. The case was set down for trial in the Alpes-Maritimes

Assize Court in the first quarter of 1986, but by an order of 11 March 1986 the Assize Court President postponed the trial to a subsequent session as the applicant had been charged with the offence (délit) of conspiracy to suborn a witness (see paragraph 13 above) and the two sets of proceedings were related.

19. On 19 November 1986 the French authorities temporarily handed Mr Klaushofer and Mr Ceccio over to the Swiss authorities, pursuant to section 8 of the Extradition of Aliens Act of 10 March 1927 (see paragraph 38 below), in connection with a murder investigation in that country in which they were implicated. Mr Klaushofer was brought back to France on 26 February 1990, having been sentenced in Switzerland to twenty years' imprisonment; Mr Ceccio had been returned on 25 January 1988 following a finding that there was no case for him to answer.

20. On 12 June 1990 the Alpes-Maritimes Assize Court separated the proceedings concerning the applicant and Mr Klaushofer from those directed against Mr Ceccio, and postponed the former to a subsequent session. It did so following an application to that effect from Mr Klaushofer's counsel, which was supported by the applicant's lawyers, as is clear from the following extract from that decision:

" ...

Mrs Boncompagni, counsel for the accused Stephan Klaushofer, requests the adjournment of the case, principally on the ground that, as she was appointed by the court on 8 June 1990, she has not had sufficient time to study fully the file; moreover, the accused has designated another lawyer, Mr Vergès, to conduct his defence;

Mr Peyrat and Mrs Méral, counsel for the accused Michel Kemmache, associate themselves with this application, referring to the 'indivisibility of the accused's cases';

..."

21. When notified that the hearing would be held on 13 and 14 December 1990, and invited to report the day before to Nice prison in order to be taken into custody, the applicant produced on 10 December a certificate attesting his entry into the specialised hospital of Ville Evrard (Neuilly-sur-Marne) on 5 December, following an assault of which he had been the victim in Nice a few days previously. By an order of 13 December 1990 the President of the Alpes-Maritimes Assize Court noted that Mr Kemmache had not given himself up to be taken into custody despite the conclusions of a medical report, drawn up at the request of the principal public prosecutor and filed on 11 December, according to which his psychological and mental state did not prevent him from appearing normally in the Assize Court. In addition, he ordered the separation of the proceedings against the applicant from those concerning Mr Klaushofer, and postponed the case to a subsequent session.

22. On 25 April 1991 the Alpes-Maritimes Assize Court sentenced the applicant - who had been re-arrested on 14 March 1991 under the arrest warrant issued by the Lyon Court of Appeal indictments division on 13 August 1985 (see paragraph 17 above) - to eleven years' imprisonment and a fine of 2,600,000 French francs. The following day Mr Kemmache filed an appeal with the Court of Cassation, which is still pending.

(b) The proceedings concerning the subornation offence (l'affaire correctionnelle)

23. On 4 March 1987 the Nice investigating judge committed Mr Kemmache and a co-accused for trial in the Nice Criminal Court (tribunal correctionnel) on the charges of suborning a witness and conspiring to suborn a witness.

On 20 October 1987 they were both acquitted.

B. The detention on remand

24. During the two above-mentioned sets of proceedings the applicant remained in detention on remand for a total of more than three years.

1. The first detention (16 February - 29 March 1983)

25. On the day on which he was charged with the main offence (crime), 16 February 1983 (see paragraph 10 above), Mr Kemmache was remanded in custody at Nice Prison. On 29 March 1983 he was released subject to court supervision and the payment of a security of 500,000 francs; the investigating judge had dismissed a first application for release on 25 February 1983.

2. The second detention (22 March 1984 - 19 December 1986)

26. Pursuant to an arrest warrant of 22 March 1984, the applicant was detained at the border of France and Monaco and brought before the investigating judge of the Nice tribunal de grande instance. The same day the latter again remanded him in custody in Nice Prison and, on 26 March 1984, ordered that he appear before him. The investigating judge took the view that Mr Ceccio's revelations gave grounds for fearing that pressure might be brought to bear on the witnesses (see paragraph 11 above) and Mr Kemmache had failed to comply with the summons to appear on 20 March (ibid.).

27. The applicant then lodged numerous applications for his release; he claimed that he was innocent, maintaining that no new fact justified the issue of the second warrant, that there was no danger of his absconding, that he had not sought to evade trial and that his presence was necessary in charge of his business; he offered to lodge, as an additional security, any sum fixed by the courts.

In the memorials which he submitted at the hearings on 10 May 1984, 13 August 1985 and 28 October 1986, he stressed the reasons for his failure to appear on 20 March 1984 (see paragraphs 11 and 26 above). In the first, he stated:

"[that] until 20 March 1984 he had complied with the conditions of court supervision which had been imposed, that on that date he [had] come to Nice where he [had] arrived on 18 March 1984 to obey the summons by the investigating judge, who was to question him on 20 March at 3 p.m., that on Monday 19 March, on his way to Miramas to visit the wife of his associate, his car [had] broken down and this [had] prevented him from attending the interview to which he had been summoned."

In the second, he asserted that only "an unfortunate combination of circumstances, which he had explained at length," had prevented him from reporting to the investigating judge.

In the third, he affirmed as follows:

"Michel Kemmache acted entirely in good faith and that good faith cannot be called in question in so far as ... he did indeed intend reporting to the investigating judge."

He went to Nice as early as 18 March 1984, with a view to attending an examination scheduled for 20 March 1984.

In this respect pursuant to the subpoena which was issued on 11 April 1982, Mrs Evelyn Monod, the manager of the King George Hotel at Nice, declared that Michel Kemmache had spent two nights in her hotel, that, having arrived on 18 March 1984, he had left on 19 March 1984 in the afternoon.

It has also been established, by the attestation of Mr Charles Kaiser, dated 17 July 1984, that Michel Kemmache was to have visited him at home at Miramas on the evening of 19 March 1984 and to remain there until the morning of 20 March 1984.

As a result of mechanical problems affecting his motor vehicle, he was prevented from returning to Nice on the date and at the time fixed for the interview.

An attestation from the B.M.W. garage at Pavillon-sous-Bois, the Bessin garage, establishes that Mr Michel Kemmache's car had been kept for observation from 24 November 1983 to 10 February 1984, nearly three months, because the car had already had mechanical problems.

However despite these mishaps Michel Kemmache went on the following morning, the morning of 21 March, to the investigating judge who chose to postpone the examination of Michel Kemmache to a later date.

..."

28. The courts called upon to rule on these applications gave a series of decisions dismissing them, stating as their reasons essentially the lack of guarantees that the applicant would appear for trial, in that he had already tried to evade the obligations of court supervision, and the risk of pressure being brought to bear on the witnesses, in the light of Mr Ceccio's revelations.

Decision of the indictments division of the Aix-en-Provence Court of Appeal of 10 May 1984

"...

It appears that the results of the verifications effected to determine how Kemmache spent the three days of 19, 20 and 21 March 1984, in particular the statements of Fernandez, who was at his side for these three days, far from corroborating the accused's explanations, contradict them, in particular as regards the claim that he had undertaken a trip to Miramas in the course of which an unexpected mechanical incident occurred;

Ceccio's statements on the facts relating to the subornation of which he accuses Kemmache are on the other hand corroborated by various counterfoils of postal orders annexed to the file and these facts are at least an indication of a determination on the part of the accused to make every effort to evade the sanctions which he is liable to incur given the present state of the evidence against him resulting from the investigation;

Having regard to this evidence, Kemmache risks a sentence for a serious crime and his release would make it possible for him to bring pressure to bear on witnesses, as he has already tried to do in respect of Ceccio, and this is something of

which the investigating judge was unaware when he placed the accused under court supervision, and to concert with third parties with a view to impeding the establishment of the truth;

It is also necessary to keep him in detention in order to protect public order from the serious disturbance caused by the offences in question, which were committed in the context of an international traffic in counterfeit money, a feature of organised crime;

In addition, Kemmache, who has previous convictions, in view of the severity of the new sanction which he risks and the latest developments as regards his conduct, would not seem to be able to provide sufficient guarantees of his appearance for trial and his detention now appears to be the only means of ensuring with certainty that he will remain at the disposal of the judicial authorities;

..."

Decision of the indictments division of the Aix-en-Provence
Court of Appeal of 24 July 1984

"...

The alleged offences are very serious since they consist of a traffic in counterfeit money organised from a foreign country;

...

In a memorial lodged at the registry on 10 July 1984 by his lawyer, he argues that he has a permanent address, that he is a businessman, that he has a family and is therefore capable of providing all the guarantees that he will appear for trial;

...

Considerable evidence exists against the accused, who was seriously implicated in the course of the investigation;

When placed under court supervision subject to the payment of a security, he travelled without leave and without a valid reason in order to deal with his business affairs in Paris;

He failed to comply with the summons of the investigating judge, who had to have him re-arrested;

He is therefore not capable of providing sufficient guarantees that he will appear for trial;

He may perfectly well not appear before the Assize Court, the prospect of a sentence for serious crime being such as to encourage him to flee;

His detention is necessary as a precautionary measure;

..."

Decision of the indictments division of the Aix-en-Provence
Court of Appeal of 7 August 1984

"...

He is however implicated in a major traffic in counterfeit US dollars in which he is alleged to have played an important

role, considerable evidence exists against him and he cannot provide guarantees that he will appear for trial;

..."

Decision of the indictments division of the Aix-en-Provence
Court of Appeal of 28 August 1984

"...

There is considerable evidence against the accused which relates to serious offences such as are liable to disturb public order, which must be maintained;

This evidence stems from the statements of a co-accused Ceccio who formally implicated him, but also from other testimony and his presence in a restaurant in Monaco with the others involved in this case on the day on which delivery was taken of the counterfeit banknotes;

Michel Kemmache has previous convictions and the guarantees that he will appear for trial which he has proposed are insufficient;

It is necessary to keep him in detention in order to ensure that he will appear for trial;

His application for release must therefore be dismissed;

..."

Decision of the indictments division of the Aix-en-Provence
Court of Appeal of 9 October 1984

"...

There is considerable evidence against this accused, who on that account risks a sentence for a major offence;

Kemmache's release would make it possible for him to bring pressure to bear on the witnesses and to concert unlawfully with third parties to impede the establishment of the truth, as he has already done according to the statements of his co-accused, Ceccio;

It is also necessary to keep him in detention in order to protect public order from the grave disturbance caused by the offence of participation in an international traffic in counterfeit money, a feature of organised crime;

In addition, in view of his previous convictions and the sanction he risks incurring, Kemmache, who when previously under court supervision was finally apprehended on 22 March 1984 at the border of France and Monaco, cannot provide sufficient guarantees that he will appear for trial and his detention is necessary in order to ensure that he remains at the disposal of the judicial authorities;

..."

Decision of the indictments division of the Aix-en-Provence
Court of Appeal of 13 November 1984

"...

Considerable evidence exists against this accused who accordingly risks a sentence for a major offence;

Given that at this stage Kemmache denies any culpable involvement in the alleged offences, his release would make it possible for him to bring pressure to bear on the witnesses, as he has already tried to do with his co-accused Ceccio, who reported his attempts in this respect, and to concert unlawfully with third parties in order to impede the establishment of the truth;

It is also necessary to keep him in detention in order to protect public order from the serious disturbance caused by the alleged offence of participation in an international traffic of counterfeit money, a feature of organised crime;

In addition, in view of his previous convictions and having regard to the severity of the sentence which he risks, Kemmache who, when placed under court supervision, was finally apprehended on 22 March 1984 at the border of France and Monaco, cannot provide sufficient guarantees that he will appear for trial and his detention is necessary to ensure that he remains at the disposal of the judicial authorities;

..."

Decisions of the indictments division of the Grenoble Court of Appeal of 23 May and 18 June 1985

"...

Despite Michel Kemmache's denials, there is considerable evidence of his guilt as noted in the decision of 15 May 1985 committing this accused for trial in the Alpes-Maritimes Assize Court on charges of use on French and Monegasque territory of counterfeit foreign money and ... unlawful circulation of counterfeit banknotes within the customs area;

The seriousness of the offences resulted in a profound and long lasting disturbance of public order; Michel Kemmache was placed in detention the second time because he had failed to comply with a summons by the investigating judge;

If he were to be released, there is a risk that he would evade trial;

He could also, as he has already done in respect of Ceccio, bring pressure to bear on witnesses;

The application for release filed by Michel Kemmache must accordingly be dismissed;

..."

Decision of the indictments division of the Lyon Court of Appeal of 13 August 1985

"...

The alleged offences in respect of which there are serious and concurring indications of Kemmache's guilt are not as he maintains harmless offences, but are particularly serious ones which caused a considerable disturbance to public order;

While Kemmache does indeed have a fixed address, he has already been convicted twice and sentenced to long terms of imprisonment for theft;

The guarantees that he will appear for trial which he claims

to be reliable are all the more doubtful since he has already had to be returned to detention after a period of freedom because he failed to comply with the summons of the investigating judge;

In these circumstances his application for release must be dismissed both in order to keep at the disposal of the judicial authorities an accused in respect of whom there are serious indications of guilt and who cannot provide genuine guarantees that he will appear for trial and with a view to protecting public order from the disturbance caused by the offence and to avoid its repetition;

..."

On 17 July and 3 September 1985 the Criminal Division of the Court of Cassation quashed the two decisions of the indictments division of the Grenoble Court of Appeal of 23 May and 18 June 1985 on the ground that the composition of the indictments division had been unlawful, but dismissed on 29 October 1985 an appeal against the decision given in Lyon on 13 August 1985.

29. On 18 April 1986 the indictments division of the Lyon Court of Appeal dismissed a further application, filed with it on 1 April and based on Article 5 para. 3 (art. 5-3) of the Convention. It found as follows:

"...

At this stage of the proceedings there [is] sufficient evidence that the accused committed the alleged offences, in other words that he was, irrespective of the subornation charge, one of the organisers of a major traffic in counterfeit dollars;

Such offences caused a disturbance to public order, an important aspect of which is the confidence that individuals, businessmen, bankers and any other persons must be able to have in money, and only detention can protect against such disturbance;

In view of the complexity of the facts, their particular gravity and the heavy sentence risked, detention of two to three years is not abnormal, regard being had to the last appeals filed (in the Court of Cassation), which were dismissed; thus the accused's right to be tried within a reasonable time has not been infringed, in particular because he appears not to be unconnected with the President of the Assize Court's decision to adjourn the case;

...

In addition, in view of the heavy sentence risked, only detention can ensure that this accused will appear for trial and remove from him, as a person with two previous convictions, the temptation to resort again to a life of crime and to bring pressure to bear on the witnesses and the co-accused, the announcement of whose forthcoming release is perhaps premature;

It follows that, both to protect public order from the disturbance caused by the traffic in counterfeit banknotes and to prevent the repetition of the offence as well as to ensure that the accused appears for trial and to avoid pressure being brought to bear on the witnesses and the co-accused, detention remains necessary;

..."

On 16 July 1986 the Criminal Division of the Court of Cassation dismissed the applicant's appeal against this decision:

"In the light of these reasons and taking into account the new fact on which the President of the Assize Court's decision to adjourn the case in the interests of the proper administration of justice was founded, the indictments division could, irrespective of the fact that certain of the grounds given were superfluous, consider, as it did, that the accused's right to be tried within a reasonable time had not been disregarded in this instance;

..."

30. Further decisions dismissing applications for release were given subsequently:

Decision of the indictments division of the Lyon Court of Appeal of 5 September 1986

"...

As the indictments division already held on 18 April 1986, in connection with an earlier, similar application, for reasons which remain entirely valid, the decision committing the accused for trial shows that there is sufficient evidence that the accused, and only his personal situation is relevant in this respect, did commit the offences in question, namely that he was, irrespective of the subornation charge, one of the organisers of a major traffic in counterfeit dollars;

Such offences caused a disturbance to public order, an important aspect of which is the confidence that individuals, businessmen, bankers and any other persons must be able to have in money, and only detention can protect against such disturbance;

In view of the complexity of the facts, their particular gravity and the heavy sentence risked, detention of two or three years is not abnormal, regard being had to the last appeals filed (in the Court of Cassation), which were dismissed; thus the accused's right to be tried within a reasonable time has not been infringed, in particular because he appears not to be unconnected with the President of the Assize Court's decision to adjourn the case;

...

In addition, in view of the heavy sentence risked, only detention can ensure that the accused will appear for trial and remove from him, as a person with two previous convictions, the temptation to resort again to a life of crime and to bring pressure to bear on the witnesses and the co-accused;

It follows that, both with a view to protecting public order from the disturbance caused by the traffic in counterfeit banknotes and to prevent the repetition of the offence as well as to ensure that the accused appears for trial and to avoid pressure being brought to bear on the witnesses and the co-accused, detention remains necessary;

..."

Decision of the indictments division of the Lyon Court of Appeal of

20 September 1986

" ...

It appears from the proceedings that there are on the facts serious and concurring indications that Kemmache was one of the organisers of a very major traffic in counterfeit 100 US dollar banknotes, as Ceccio and Klaushofer's statements have been corroborated by the concurring statements of Miss Busson, of Brahim and others and by the facts ascertained and the information obtained;

Such offences entailed for public order, an important aspect of which is the confidence which individuals, bankers and other persons must be able to have in money, a disturbance which only detention can alleviate;

His criminal record (two convictions) gives rise to fears that he might resume a life of crime;

In the light of the heavy sentence risked, the guarantees that he will appear for trial are very far from being sufficient;

Finally, if he were released, Kemmache could be tempted to continue to bring pressure to bear on his co-accused and on the witnesses;

Accordingly, in order to alleviate the disturbance caused to public order by the offence and to ensure that the accused does not, as he has done in the past, fail to answer summonses, to avoid his resuming a life of crime and pressure being brought to bear on the witnesses and his co-accused, detention remains necessary;

..."

Decision of the indictments division of the Lyon Court of Appeal of
28 October 1986

" ...

Although the detention has indeed been long, the nature and the complexity of the case, the large number of appeals, and the development of a related case of subornation explain the delays in concluding the proceedings and in bringing the accused before the trial court;

Having regard to all the evidence, it does not, however, appear that the periods involved have been abnormal and that the rights of the accused set out in the Convention referred to have been disregarded;

With regard to the guarantees that he will appear for trial, Kemmache relies on a fixed address where his wife states that she is ready to welcome him and provides three attestations of employers who say that they are ready to employ him;

He states that he was released on 29 March 1983 by the investigating judge after his imprisonment on 16 February 1983, subject to court supervision, and then reincarcerated on 22 March 1984 for not having complied with the obligations imposed on him; he maintains that he cannot be blamed for this conduct since a mistake as to the date, not attributable to him, was at its origin;

The claims concerning guarantees made by Mr Kemmache appear

sincere even though the number of promises of immediate employment is somewhat unusual at a time of widespread unemployment;

However, in view of Kemmache's criminal record and the severity of the sentence risked, it is to be feared that the accused, who is known to have contacts abroad, will try to evade trial;

Given the nature of the offence, a repetition is also to be feared;

In those circumstances it is necessary to maintain the accused at the disposal of the judicial authorities by continuing his detention and dismiss the application for release, which is not well-founded;

..."

On 9 October and 6 November 1986, the Alpes-Maritimes Assize Court rejected two new applications for release in decisions setting out identical reasons:

"...

Kemmache ... does not rely on any new submission in support of his new application;

The offences of which Kemmache is accused are serious; he risks a heavy sentence; he has already been convicted for aggravated theft; it is to be feared that if he were released, he would bring pressure to bear on the witnesses and seek to evade trial;

It is necessary to keep him in detention in order to avoid pressure being brought to bear on the witnesses and to ensure that the accused remains at the disposal of the judicial authorities;

..."

31. However, on 8 December 1986 it ordered Mr Kemmache's release, subject to court supervision, for the following reasons:

"...

The investigation has been concluded and as certain of his co-accused have been extradited to foreign countries, the case cannot be heard before the assize court for some considerable time;

It is appropriate in the circumstances, having regard to the guarantees of his appearance for trial provided by Kemmache, and in accordance with the submissions of the avocat général, who has stated that he does not oppose the release requested, to order Kemmache's provisional release, subject nevertheless to court supervision and to the payment of a security which is to be fixed at 300,000 francs;

..."

The applicant was released on 19 December.

32. On 7 and 20 July 1988 he applied to the indictments divisions of the Lyon and Aix-en-Provence Courts of Appeal, respectively, for the reimbursement of the securities of 500,000 and 300,000 francs paid by him (see paragraphs 25 and 31 above). On 4 October 1988

the Alpes-Maritimes Assize Court ordered the repayment of the securities and the complete lifting of the court supervision conditions.

3. The third detention (11 June - 10 August 1990)

33. The applicant was summoned to appear on 12, 13 and 14 June 1990 in the Alpes-Maritimes Assize Court. On 11 June he reported to be taken into custody pursuant to the relevant order.

By its decision adjourning the proceedings and severing the proceedings against Mr Ceccio on 12 June 1990 (see paragraph 20 above), the Assize Court ordered that he be remanded in custody in Nice prison.

34. The applicant unsuccessfully filed several applications for his release, but finally, on 4 July 1990, the indictments division of the Aix-en-Provence Court of Appeal allowed his release subject to court supervision and the payment of a security of 800,000 francs, which it agreed, on 26 July, to divide into eight instalments of 100,000 francs each.

The applicant challenged the decision of 4 July 1990, on the ground that the indictments division had wrongly placed him under court supervision; he relied, *inter alia*, on Article 5 paras. 1, 3 and 4 (art. 5-1, art. 5-3, art. 5-4) of the Convention and Article 6 paras. 1 and 2 (art. 6-1, art. 6-2). The Criminal Division of the Court of Cassation dismissed the appeal on 22 November 1990.

35. Mr Kemmache paid a first instalment of 100,000 francs on 10 August 1990, then a second on 10 September. As his financial circumstances made it impossible for him to meet the following instalments, he reported on 10 September to the principal public prosecutor at the Aix-en-Provence Court of Appeal, declaring that he was ready to be taken into custody; he confirmed this to the official in question by bailiff's letter on 10 October.

36. In the meantime he had twice applied for the lifting of the court supervision in so far as it concerned the obligation to pay a security. The indictments division dismissed his application on 8 August and 5 September 1990. He complained of these decisions to the Court of Cassation on the basis, *inter alia*, of Article 5 paras. 1, 3 and 4 (art. 5-1, art. 5-3, art. 5-4) of the Convention together with Article 6 paras. 1 and 2 (art. 6-1, art. 6-2); his appeals were dismissed on 22 November and 20 December 1990.

II. The relevant legislation

A. Detention on remand

37. 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 not less than 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 the category of "major" criminal offences (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 acknowledged by the accused's signature in the file of the proceedings.

As regards 'major' 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 give his decision, by an order setting out 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.

..."

B. Extradition of aliens

38. Section 8 of the Extradition of Aliens Act of 10 March 1927 provides as follows:

"Where an alien is prosecuted, or has been convicted, in France and the French Government is requested to extradite him in connection with a different offence, his extradition shall be effected only after the prosecution is concluded, and, in the event of his conviction, after the sentence has been served.

However, this provision shall not preclude an alien being sent temporarily to appear before the courts of the requesting State, subject to the express condition that he is to be sent back as soon as the foreign judicial authorities have given judgment.

..."

PROCEEDINGS BEFORE THE COMMISSION

39. In his applications (nos. 12325/86 and 14992/89), which were lodged with the Commission on 1 August 1986 and 28 April 1989, Mr Kemmache alleged the violation of respectively:

- Article 5 para. 2 (art. 5-2) of the Convention, on the ground that he had not been informed "promptly ... of the reasons for his arrest and of [the] charge[s] against him"; Article 5 para. 3 (art. 5-3), in view of the length of his detention on remand; and Article 6 para. 2 (art. 6-2) because the principle of the presumption of innocence had been infringed;

- Article 6 para. 1 (art. 6-1) inasmuch as the main criminal proceedings had exceeded a "reasonable time". He did not challenge the length of the related subornation proceedings.

40. On 10 March 1989 the Commission declared inadmissible the complaints based on Article 5 para. 2 (art. 5-2) (for failure to exhaust domestic remedies) and Article 6 para. 2 (art. 6-2) (as manifestly ill-founded); on the same day it declared the remainder of the first application (i.e. the complaint under Article 5 para. 3) (art. 5-3) admissible and then, on 7 June 1990, it found the second application (Article 6 para. 1) (art. 6-1) admissible in its entirety. In its reports of 8 June and 3 July 1990 (Article 31) (art. 31), it expressed the opinion by thirteen votes to three that there had been a violation of Article 5 para. 3 (art. 5-3) and, unanimously, that there had been a violation of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion and of the dissenting opinion contained in the report 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 218 of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

41. On 18 December 1990 and 11 April 1991, Mr Kemmache lodged two further applications with the Commission (nos. 17621/91 and 18159/91); in the first he complained of his third detention (see paragraphs 33-36 above); in the second he claimed that his rearrest on 14 March 1991 had been arbitrary (see paragraph 22 above).

FINAL SUBMISSIONS TO THE COURT

42. At the hearing on 19 March 1991 the Agent of the Government confirmed the submissions made in his memorials. In these submissions he requested the Court to find that there had been no breach of the requirements of Articles 5 para. 3 and 6 para. 1 (art. 5-3, art. 6-1).

The applicant's lawyer asked the Court to find an infringement of the same provisions and to award his client the compensation sought.

AS TO THE LAW

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

43. Mr Kemmache relied on 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 considered the overall length of the deprivations of liberty in question not to have been excessive, in the light of the criteria laid down in the Court's case-law.

The Commission took the view that, at least from 29 June 1984 (see paragraph 12 above), the applicant's detention was no longer based on reasonable grounds.

A. Periods to be taken into consideration

44. The applicant underwent four periods of detention on remand: from 16 February to 29 March 1983 (see paragraph 25 above), from 22 March 1984 to 19 December 1986 (see paragraphs 26-31 above), from 11 June to 10 August 1990 (see paragraphs 33-35 above) and from 14 March to 25 April 1991 (see paragraph 22 above).

Only the first two periods, which lasted a total of two years, ten months and ten days, are to be taken into consideration in this instance: the others were subsequent to 8 June 1990, the date on which the Commission's report on the alleged violation of Article 5 para. 3 (art. 5-3) was adopted, and are the subject of new applications which are pending (see paragraph 41 above).

B. Reasonableness of the length of the two relevant periods of detention

45. 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 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 para. 3 (art. 5-3) (see, as the most recent authority, the *Letellier v. France* judgment of 26 June 1991, Series A no. 207, p. 18, para. 35).

Where an arrest is based on reasonable suspicion that the person concerned has committed an offence, persistence of that suspicion

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 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 (ibid., p. 18, para. 35).

1. The first detention

46. The first detention began on 16 February 1983 and ended on the following 29 March, after approximately six weeks. Mr Kemmache maintained that it was not justified, pointing to, among other things, the rapidity with which he was released.

In the Government's opinion, the investigating judge needed this time to conduct, without fear of any pressure being brought to bear or of unlawful collusion, the initial investigations and confrontations at a decisive stage in the proceedings. Furthermore, he agreed to release the applicant only subject to court supervision and after the payment of a substantial security, in view of the gravity of the alleged offences and the resulting risk that the accused might abscond.

The Commission confined itself to observing that the applicant had satisfied the conditions thus laid down.

47. In the Court's view, the nature of the offences to be investigated and the requirements of the investigation could justify the detention in question.

2. The second detention

48. The second detention to be taken into consideration lasted from 22 March 1984 to 19 December 1986, nearly two years and nine months.

In dismissing Mr Kemmache's applications for release, the relevant courts cited four main grounds: the seriousness of the offences and the severity of the sentence risked; the requirements of public order; the need to prevent pressure being brought to bear on the witnesses and the co-accused; and the necessity of preventing the applicant from absconding.

(a) The seriousness of the offences and the severity of the sentence risked

49. The Government stressed the seriousness of the offences which Mr Kemmache was alleged to have committed and the severity of the sentence which he risked: he had been committed for trial in the Assize Court on charges of aiding and abetting the offence (crime) of importing and uttering in France counterfeit banknotes, and of aiding and abetting the related offence (délit) of unlawful circulation of counterfeit banknotes; he risked life imprisonment.

According to the applicant, on the other hand, to take account of these two factors was to violate the principle of the presumption of innocence.

50. 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 alone cannot justify such a long period of pre-trial detention (see paragraph 45 above).

(b) The requirements of public order

51. With the exception of the indictments division of the Aix-en-Provence Court of Appeal in its decisions of 24 July and 7 August 1984 (see paragraph 28 above) and of the Alpes-Maritimes Assize Court in its decisions of 9 October and 6 November 1986 (see paragraph 30 above), the courts before which the matter came expressed forcefully, if in varying terms, the need to protect public order from the disturbance caused by the offences of which Mr Kemmache was accused.

The Government endorsed this reasoning, whilst the applicant challenged it.

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 of the charges pending against the person concerned.

52. 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 French Code of Criminal Procedure - the notion of disturbance of 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 (see the *Letellier v. France* judgment, cited above, Series A no. 207, p. 21, para. 51).

In this case these conditions were not satisfied. Some of 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 (see, *mutatis mutandis*, the same judgment, p. 21, para. 51). Others invoked "the confidence which private individuals, businessmen, bankers and any other persons must be able to have in money" (see paragraphs 29-30 above), thus confining themselves to noting the effects of the alleged offences.

(c) The risk of pressure being brought to bear on the witnesses and the co-accused

53. In the Government's contention, the new facts revealed by Mr Ceccio justified the applicant's detention: they gave grounds for fearing that pressure would be brought to bear on the witnesses and the co-accused. He had been released as soon as this risk had disappeared, in other words at the end of the criminal investigation into the "less serious" offence (*instruction correctionnelle*).

The applicant maintained that for three years he had been detained in the same prison as his co-accused, Mr Klaushofer and Mr Ceccio.

In the Commission's view, the fear of collusion and suppression of evidence was conceivable at the beginning of the investigation, but once the witnesses had been questioned on numerous occasions, it could no longer play a decisive role.

54. The Court notes that the detention order of 22 March 1984 was issued in connection with the proceedings relating to the main

offence (procédure criminelle); no such order was made in the context of the related proceedings in the subornation case (procédure correctionnelle). It must be inferred from this that after 29 June 1984 (see paragraph 12 above), the date on which the investigation into the main offence was concluded by the investigating judge, the risk in question disappeared and could no longer serve as a justification for detention.

(d) The risk of the applicant's absconding

55. The Government considered that there was a danger of the applicant's absconding. When released subject to court supervision, Mr Kemmache had not complied with certain of his obligations: he had twice, on 13 and 20 March 1984, without good reason, failed to report to the investigating judge.

The applicant stressed that the hearing set down for 13 March had been postponed to 20 March (see paragraph 11 above); he claimed that the breakdown of his car had prevented him from going to the court on that date. He added that a few hours later his lawyer had telephoned in his presence to the investigating judge, who had said that he intended to summon the applicant at a later date.

In the Commission's opinion, it could not automatically be assumed that there was a risk of the applicant's absconding and the decisions on this question gave insufficient reasons in so far as they did not cite the slightest fact capable of establishing such a risk.

56. The Court observes that in the memorials submitted in support of three of his applications for release (see paragraph 27 above), the applicant gave certain explanations concerning his failure to appear on 20 March. The indictments division of the Aix-en-Provence Court of Appeal noted however, in its decision of 10 May 1984:

"... the results of verifications effected to determine how Kemmache spent the days of 19, 20 and 21 March 1984, in particular the statements of Fernandez, who was at his side for these three days, far from corroborating the accused's explanations, contradict them, in particular as regards the claim that he had undertaken a trip to Miramas in the course of which an unexpected mechanical incident had occurred" (see paragraph 28 above).

It appears from the documents produced that Mr Kemmache was indeed in Nice on the day on which he was to appear before the investigating judge and that his car had not had any mechanical problems (see paragraph 11 above). The courts in question were thus entitled to believe that there was a risk that he would evade trial. However, they no longer relied on such a risk after 18 April 1986 so that, at least subsequent to that date, detention was no longer justified on this account.

(e) Conclusion

57. These various considerations lead the Court to conclude that the contested detention infringed Article 5 para. 3 (art. 5-3) in so far as it lasted until 19 December 1986.

II. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1

58. In the applicant's submission, the duration of the criminal proceedings (poursuites criminelles) instituted against him exceeded a reasonable time within the meaning of Article 6 para. 1 (art. 6-1), according to which:

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

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

A. Period to be taken into consideration

59. The period to be taken into consideration began on 16 February 1983, the date on which Mr Kemmache was charged; it has not yet ended, as the Court of Cassation has still to rule on the latter's appeal against the Assize Court's decision of 25 April 1991 (see paragraphs 10 and 22 above). It has therefore already lasted more than eight and a half years.

B. Reasonableness of the length of the proceedings

60. 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 case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities (see, among many other authorities, the *Manzoni v. Italy* judgment of 19 February 1991, Series A no. 195-B, p. 29, para. 17).

Each stage of the proceedings must be examined with reference to these criteria.

1. The investigation (16 February 1983 - 29 June 1984)

61. The investigating judge concluded the investigation and forwarded the file to the prosecuting authorities on 29 June 1984, in other words sixteen months and two weeks after having charged Mr Kemmache. Such a lapse of time cannot be regarded as excessive in this instance. In any event, the applicant did not accuse the judge in question of any lack of diligence.

2. The trial (after 29 June 1984)

(a) Complexity of the case

62. Before the Commission, the Government cited the complexity of the case; they referred to the number of the perpetrators and accomplices involved, the problem raised by the precise legal classification of the offences and the opening of an investigation on a count of subornation and conspiracy to suborn witnesses. They did not revert to this point once the case had been brought before the Court.

(b) Applicant's conduct

63. Nor did the Government reiterate the criticism which they had levelled at Mr Kemmache for having filed numerous appeals in the Court of Cassation; the Commission had regarded such criticism as unfounded. They contended on the other hand that the applicant had twice contributed to prolonging the proceedings: on 12 June 1990, by associating himself with an application to adjourn the case to a subsequent session and by objecting to the separation of his case from that of Mr Klaushofer; on 12 December 1990, by not reporting to be taken into custody the day before the trial.

On the first point, the applicant claimed that he had wished to protect the rights of the defence of his co-accused; on the second, he maintained that the assault of which he had been a victim had left him mentally incapable of appearing at the hearing on 13 December 1990.

The Commission did not express a view on this question.

64. In the Court's opinion the judicial authorities cannot be held responsible for the prolongation resulting from the adjournment decided on 12 June 1990 on an application by Mr Klaushofer, with the agreement of Mr Kemmache and entailing the separation of Mr Ceccio's case (see paragraph 20 above). The applicant himself caused an additional delay by not reporting to the prison on 12 December 1990, despite the fact that according to a medical report his state of health did not prevent him from appearing at the Assize Court (see paragraph 21 above).

(c) Conduct of the judicial authorities

65. In the Government's contention, the judicial authorities cannot be criticised for any delay in the conduct of the case. The length of the trial proceedings was due to two circumstances: the existence of proceedings against Mr Kemmache for the subornation offence (*poursuites correctionnelles*) and the temporary handing over to Switzerland of the latter's co-accused.

i. The proceedings for the subornation offence (*poursuites correctionnelles*)

66. The proceedings in question had led the President of the Assize Court, on 11 March 1986, to adjourn to a subsequent session the examination of the case relating to the main offence. Again according to the Government, this decision was explained by the close link between the two proceedings and corresponded to the interests of the accused himself.

The applicant objected that the second set of proceedings had plainly been intended to expand artificially the file in the first; he pointed out in addition that the second set of proceedings had resulted in an acquittal.

67. The Court considers that although the subornation proceedings, which were themselves very long (18 June 1984 - 20 October 1987, see paragraphs 13 and 23 above), had some effect on the course of the main proceedings, contrary to the Government's claim that does not justify the length of the latter proceedings.

ii. The handing over of the co-accused to Switzerland

68. The Government conceded that from 20 October 1987 the main proceedings (*affaire criminelle*) were ready for trial. They pointed out nevertheless that two of the applicant's co-accused, Mr Klaushofer and Mr Ceccio, had provisionally been handed over to the Swiss judicial authorities on 19 November 1986 in order to facilitate the investigation of the murder, in Sicily, of a Swiss national.

The measure in question, which was taken pursuant to section 8 of the Extradition of Aliens Act of 10 March 1927 (see paragraph 38 above), was said to have been based on several grounds: the fact that the trial in the main proceedings was not imminent, because it depended on the course of the second set of proceedings, the undertaking of the Swiss authorities to return the persons concerned to the French judicial authorities promptly, and the gravity of the offences investigated in Switzerland and the need for speedy proceedings, whereas in France the main investigation had been terminated and the risk that the evidence might disappear had receded.

Mr Ceccio had been returned to Nice prison on 25 January 1988 after a ruling in Switzerland on 24 December 1987 that there was no case

for him to answer; Mr Klaushofer did not return to Nice until 26 February 1990, after he had been sentenced by the courts in that country to twenty years' imprisonment.

No doubt their absence would not, in theory, have prevented bringing Mr Kemmache to trial earlier. In particular, if they were unable to obtain Mr Klaushofer's return, the French judicial authorities could have separated his case from that of Mr Kemmache and Mr Ceccio. They decided against doing so because Mr Klaushofer's statements constituted one of the fundamental elements of the prosecution case and the persons concerned risked a very heavy sentence.

On 23 June 1988, in reply to representations by the French authorities, the Swiss authorities expressed their wish to postpone sending Mr Klaushofer back because of developments in his trial. By a despatch of 23 May 1989, the principal public prosecutor at the Aix-en-Provence Court of Appeal informed the Minister of Justice that the presence of the accused in France remained necessary but "that in the interests of cooperation and mutual assistance in regard to the Swiss authorities ... [he] [did] not oppose the postponement of [Klaushofer's] return subject to the proviso that he should be sent back no later than 1 January [1990]". Mr Klaushofer was returned to France on 26 February 1990 and, according to the Government, the case was set down for hearing at the next session of the Alpes-Maritimes Assize Court, on 12 June 1990.

In short, again according to the Government, the delay of two years and eight months in bringing the case to trial stemmed directly from the conduct of the Swiss authorities, who were themselves bound by the requirements of their own proceedings.

69. The applicant maintained on the contrary that his co-accused should not have been handed over to Switzerland until the end of the proceedings and that the trial could have been opened before 19 November 1986. He argued in addition that his case should have been separated from that of Mr Klaushofer.

70. Like the Commission, the Court is not convinced by the argument that such a separation of the cases could not be envisaged; it should also be noted that the Alpes-Maritimes Assize Court adopted, on 12 June 1990, a measure of this nature in respect of Mr Ceccio (see paragraph 20 above). Examination of the case-file does not in fact disclose any insurmountable obstacle which would have prevented the trial from being held during one of the sessions of the first half of 1988, in a case which had originated on 16 February 1983.

(d) Conclusion

71. Having regard to all the evidence, the Court considers that the "reasonable time" prescribed by Article 6 para. 1 (art. 6-1) was exceeded.

III. APPLICATION OF ARTICLE 50 (art. 50)

72. Under 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."

73. In respect of the violation of Article 5 para. 3 (art. 5-3), Mr Kemmache sought 8,456,250 francs for psychological, non-pecuniary and emotional damage and 1,200,000 francs for financial, professional, pecuniary and social damage (loss of earnings: 1,000,000 francs; security: 200,000 francs). He assessed in addition at 1,000,000 francs the psychological, non-pecuniary and pecuniary damage which he had allegedly sustained as a result of the breach of Article 6 para. 1 (art. 6-1). He also claimed, in respect of the two violations together, 250,000 francs for the costs of the proceedings and various fees.

The Government contested these claims and expressed the view that a mere finding of a violation would in any event provide sufficient just satisfaction.

The Delegate of the Commission proposed that compensation should be awarded in so far as the necessary causal connection existed, but did not put forward any figure.

74. The Court takes the view that the question is not ready for decision as the main criminal proceedings have not yet been concluded. Accordingly, it should be reserved and the further procedure fixed to take account of the possibility of an agreement between the respondent State and the applicant (Rule 54 paras. 1 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

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 to it in writing, within three months of the conclusion of the relevant criminal proceedings, their observations on the matter and in particular to inform it 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 27 November 1991.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar