



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

CASE OF TOMASI v. FRANCE

(Application no. 12850/87)

JUDGMENT

STRASBOURG

27 August 1992

In the case of Tomasi v. France*,

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

Mr R. RYSSDAL, *President*,

Mr R. BERNHARDT,

Mr F. GÖLCÜKLÜ,

Mr F. MATSCHER,

Mr L.-E. PETTITI,

Mr C. RUSSO,

Mr A. SPIELMANN,

Mr J. DE MEYER,

Mr J.M. MORENILLA,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

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

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission"), and then by the Government of the French Republic ("the Government"), on 8 March and 13 May 1991, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12850/87) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr Félix Tomasi, on 10 March 1987.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Article 48 (art. 48). The object of the request and of the application was to obtain a decision as to whether the facts of the case

* The case is numbered 27/1991/279/350. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

disclosed a breach by the respondent State of its obligations under Articles 3, 5 para. 3 and 6 para. 1 (art. 3, art. 5-3, art. 6-1).

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

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

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Government, the Delegate of the Commission and the applicant's lawyers on the organisation of the procedure (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Government, the applicant and the Delegate of the Commission lodged their memorials on 5 November, 22 November and 13 December 1991, respectively.

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

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

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

There appeared before the Court:

- for the Government

Mr J.-P. PUISSOCHET, Director

of Legal Affairs, Ministry of Foreign Affairs, *Agent,*

Mr B. GAIN, Head

of the Human Rights Section, Department of Legal
Affairs, Ministry of Foreign Affairs,

Miss M. PICARD, magistrat,

on secondment to the Department of Legal Affairs,
Ministry of Foreign Affairs,

Mr R. RIERA, Head

of the Litigation and Legal Affairs Section, Department of
 Mr J. BOULARD, magistrat,
 on secondment to the Department of Criminal Affairs and
 Pardons, Ministry of Justice, *Counsel*;
 - for the Commission
 Mr H.G. SCHERMERS, *Delegate*;
 - for the applicant
 Mr H. LECLERC, avocat,
 Mr V. STAGNARA, avocat, *Counsel*.

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

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

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

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

AS TO THE FACTS

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

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

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

The attack had been carried out by a commando of several persons wearing balaclava helmets to conceal their features. The following day the "ex-FLNC" (the Corsican National Liberation Front), a movement seeking independence which had been dissolved by decree, had claimed

responsibility for the attack and for twenty-four other bomb attacks which had been perpetrated the same night.

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

I. THE CRIMINAL PROCEEDINGS INSTITUTED AGAINST THE APPLICANT

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

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

(a) The investigative measures

i. Judge Pancrazi

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

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

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

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

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

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

ii. Judge Huber

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

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

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

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

(b) The applications for release

14. Mr Tomasi submitted eleven applications for release.

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

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

In its judgment of 20 February 1985 it stated that it was necessary to continue the detention in order to avoid pressure being brought to bear on the witnesses, to prevent unlawful collusion between the accomplices, to protect public order (*ordre public*) from the prejudice caused by the offence and to ensure that Mr Tomasi remained at the disposal of the judicial authorities.

(c) The request for a transfer of jurisdiction

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

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

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

(a) The investigative measures

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

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

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

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

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

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

(b) The applications for release

21. Mr Tomasi submitted seven applications for his release.

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

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

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

The second decision contained the following reasoning:

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

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

The latter decision was based on the following reasons:

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

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

1. Committal for trial

(a) The first committal

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

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

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

(b) The second committal

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

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

(c) The third committal

27. On 3 February 1987 the indictments division of the Bordeaux Court of Appeal ruled that it lacked jurisdiction to commit the applicant - but not his three co-accused - for trial at the specially constituted Gironde assize court, in other words the assize court sitting without a jury. The principal public prosecutor's office had requested it to apply the provisions of Law

no. 86-1020 of 9 September 1986, according to which persons accused of acts of terrorism must be tried before such a judicial body.

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

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

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

2. The applications for release

(a) The first application

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

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

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

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

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

(b) The second application

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

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

(c) The third application

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

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

(d) The fourth application

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

"A campaign of intimidation against the witnesses, policemen and judges has been waged in the course of the investigation;

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

(e) The fifth application

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

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

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

3. The trial

38. On 22 January 1988 the President of the Bordeaux Court of Appeal had directed that the session of the assize court was to open on 16 May 1988.

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

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

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

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

1. The application to the Compensation Board

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

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

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

"...

IN THE MATTER OF THE DETENTION

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

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

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

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

DISCUSSION

1. The length of the proceedings

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

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

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

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

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

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

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

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

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

This lapse of time appears excessive in view of the fact that an investigating judge must give priority to a case concerning a person held in detention on remand; he has a

duty to familiarise himself with it and proceed with the investigation as quickly as possible.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- excessive duration of his detention on remand (violation of Article 5 para. 3 of the Convention) (art. 5-3);

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

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

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

IN CONCLUSION

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

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

3. The decision of the Compensation Board

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

II. THE CRIMINAL PROCEEDINGS INSTITUTED BY THE APPLICANT

A. The origin and the filing of the complaint

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

44. During this period, the applicant:

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

(b) had undergone several interrogations:

- on 23 March from 1.15 p.m. to 2.30 p.m., from 5.30 p.m. to 8 p.m. and from 8.40 p.m. to 10.15 p.m., a total of five hours and twenty minutes;
- on 24 March from 1.30 a.m. to 2 a.m., from 4 a.m. to 4.45 a.m., from 11 a.m. to 1 p.m., from 3.40 p.m. to 8 p.m. and from 8.30 p.m. to 9.20 p.m., a total of eight hours and twenty-five minutes;
- on 25 March from 4.30 a.m. to 4.50 a.m., twenty minutes;

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

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

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

"I note the charges of which you have informed me. I am a declared member of the CCN [Consulta di i cumitati naziunalisti]. I am not a member of the FLNC. I will make a statement later in the presence of my lawyer, Mr Stagnara.

I should like to add, however, that I was struck during my police custody by police-officers; I do not wish to give their names. I was not allowed any rest. I had to ask the doctor who visited me for something to eat because I was left without food and all I had to eat was one sandwich. This morning, I was left naked in front of an open window for two or three hours. I was then dressed and beaten up. This went on continuously throughout the police custody. I can show you bruises on my chest and a red patch under my left ear."

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

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

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

B. The investigation proceedings (29 March 1983 - 6 February 1989)*1. The proceedings conducted at Bastia (29 March 1983 - 20 March 1985)***(a) The investigative measures**

i. Judge Pancrazi

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

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

...

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

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

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

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

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

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

"III. CURRENT CONDITION

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

(2) Clinical examination

...

(a) General examination:

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

(b) Cranio-facial segment:

- Two barely visible abrasions, one on the right temple and the other above the right eyebrow - Small horizontal bruise to the upper part of the left eyelid, measuring 2cm in length, colour purplish-red - Pains complained of on palpation of the right parietal region of the skull - Conjunctival redness in both eyes (the patient states that he had this condition before his police custody), non- traumatic in origin - Neurological examination: . Pupils equal size, regular and contractile. No nystagmus . Romberg negative. No asymmetry, no dysdiadochokinesis . Tendon reflexes - normal. No deviation in the index finger test and the blind walk test - Left ear:. A dark-red-coloured bruise, warm and allegedly painful on palpation, in the helix and the anthelix . The external auditory meatus and the eardrum show no sign of a traumatic injury.

(c) Cervical rachis:

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

(d) Thorax and abdomen:

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

(e) Lumbar region:

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

(f) Left arm:

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

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

IV. DISCUSSION AND CONCLUSION

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

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

- Two barely visible cutaneous abrasions on the right temple.

The red colouring of the bruises with a peripheral purple halo makes it possible to fix the date of their origin as between two and four days before the examination on 26 March 1983.

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

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

These injuries entail temporary total incapacity of three days."

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

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

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

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

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

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

I would like to say in connection with the injuries to my left ear that, in addition to the bruise noted by Dr Rovere, I bled, to be more precise my ear was bleeding, as I realised when I put a cotton bud in my ear. This lasted for a fortnight. I asked if I could see a specialist and Dr Vellutini told me that I had a perforated eardrum. I also

realised afterwards that I had a broken tooth. I was therefore not able to tell this to the experts.

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

ii. Judge N'Guyen

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

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

"SUMMARY OF THE FACTS:

The patient states as follows:

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

SYMPTOMS COMPLAINED OF AT THIS TIME:

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

CLINICAL EXAMINATION CARRIED OUT ON TODAY'S DATE

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

1. Examination of the face and the skull:

Mr Tomasi wears corrective lenses for myopia.

On examining him we noted the following:

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

On continuing the examination of the face we observed:

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

- facial motility was normal.

Further examination revealed:

- pronounced, diffuse erythema in the auricle of the left ear; - auditory capacity appeared normal, tested by the ticking of a watch and whispering.

2. Thoraco-abdominal examination:

Examination showed:

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

3. Examination of the upper members:

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

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

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

4. Examination of the lower members:

Examination entirely normal.

5. Neurological examination:

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

DISCUSSION AND CONCLUSION

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

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

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

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

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

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

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

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

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

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

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

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

He hit me throughout the two days of police custody.

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

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

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

There were others too, but I cannot name them.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. The first application

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

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

ii. The second application

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

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

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

*2. The Bordeaux proceedings (20 March 1985 - 6 February 1989)***(a) Before the investigating judge (23 April 1985 - 23 June 1987)**

i. Judge Nicod

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

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

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

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

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

ii. Judge Lebehot

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

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

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

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

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

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

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

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

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

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

On 19 January 1988 the judge with responsibility for these inquiries issued a commission rogatoire to the Director of the General Inspectorate of the National Police. Three other police-officers were thus interviewed, as well as four persons - including Mr Filippi - who had been in police custody

at the same time as Mr Tomasi, and the ear, nose and throat specialist - Dr Vellutini - who had examined him in April 1983.

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

On 25 February 1988 Dr Vellutini made the following statement:

"...

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

..."

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

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

"...

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

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

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

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

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

An expert, Dr Rovere, appointed by the investigating judge, examined Tomasi on 26 March 1983 at 12 noon and noted that he had superficial bruising on the left upper

eyelid, on the front of the chest and in the epigastric region and that of the right hypochondrium, on the left arm and the left ear, as well as two cutaneous abrasions, barely visible, on the right temple; the expert stated that the red colouring of the bruises with a purple peripheral halo made it possible to fix the date of their occurrence as between two and four days before the examination and stressed that the fact that abrasions and bruises were present simultaneously gave grounds for affirming their traumatic nature but did not indicate the actual cause of the traumatism; he fixed at three days the duration of the temporary total incapacity.

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

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

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

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

Any confrontation appears at this stage pointless.

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

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

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

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

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

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

C. Subsequent developments

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

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

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

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

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

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

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

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

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

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

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

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

PROCEEDINGS BEFORE THE COMMISSION

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

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

FINAL SUBMISSIONS TO THE COURT

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

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

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

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

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

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

Set at 2,376,588 francs the just satisfaction for the consequences suffered by Félix Tomasi as a result of the violation by the French authorities of Article 5 para. 3 (art. 5-3) of the Convention.

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

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

With all due reservations."

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

AS TO THE LAW

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

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

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

A. Government's preliminary objections

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

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

1. Objection based on the failure to exhaust domestic remedies

78. The Government stressed, as they had done before the Commission, that Mr Tomasi had lodged his application with the Commission on 10 March 1987, and therefore even before having submitted a claim to the Compensation Board at the Court of Cassation, which he did on 18 April

1989 (see paragraphs 1 and 40 above). Since then, the compensation awarded on 8 November 1991 (see paragraph 42 above) had rendered the complaint made under Article 5 para. 3 (art. 5-3) of the Convention devoid of purpose.

79. Like the applicant and the Delegate of the Commission, the Court notes in the first place that the right to secure the ending of a deprivation of liberty is to be distinguished from the right to receive compensation for such deprivation. It further observes that Article 149 of the Code of Criminal Procedure made the award of compensation subject to the fulfilment of specific conditions not required under Article 5 para. 3 (art. 5-3): namely the adoption of "a decision finding that [the accused] has no case to answer or acquitting him" and the existence of "damage of a clearly exceptional and particularly serious nature" (see paragraph 40 above). Finally, Mr Tomasi lodged his application in Strasbourg after four years spent in detention. The objection must therefore be dismissed.

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

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

The applicant disputed this view.

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

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

B. Merits of the complaint

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

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

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

The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the validity of the continued detention, but, after a certain lapse of time, it no longer suffices; the Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see, as the most recent authority, the *Clooth v. Belgium* judgment of 12 December 1991, Series A no. 225, p. 14, para. 36).

1. The grounds for continuing the detention

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

(a) Seriousness of the alleged offences

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

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

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

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

(b) Protection of public order

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

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

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

In exceptional circumstances - and subject, obviously, to there being sufficient evidence (see paragraph 84 above) - this factor may therefore be taken into account for the purposes of the Convention, in any event in so far as domestic law recognises - as in Article 144 of the French Code of Criminal Procedure - the notion of prejudice to public order caused by an offence. However, this ground can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the accused's release would actually prejudice public order. In addition, detention will continue to be legitimate only if public order remains actually threatened; its continuation cannot be used to anticipate a custodial sentence (see, as the most recent authority, the *Kemmache v. France* judgment of 27 November 1991, Series A no. 218, p. 25, para. 52).

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

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

92. Several judicial decisions adopted in this case were based on the risk of pressure being brought to bear on the witnesses - the Poitiers indictments division even referred to a "campaign of intimidation" - and that of

collusion between the co-accused; they did not, however, give any details concerning such risks (see paragraphs 16, 22 and 35 above).

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

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

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

(d) Danger of the applicant's absconding

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

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

98. The Court notes in the first place that the reasoning put forward by the Government in this respect did not appear in the contested judicial decisions. The latter were admittedly based for the most part on the need to ensure that Mr Tomasi remained at the disposal of the judicial authorities (see paragraphs 16, 22, 31 and 35 above), but only one of them - the decision of the Poitiers indictments division of 22 May 1987 - referred to a specific element in this connection: the help which members of the ex-FLNC could have given the applicant to enable him to evade trial (see paragraph 35 above).

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

seek to counter it by, for instance, requiring the lodging of a security and placing him under court supervision.

(e) Recapitulation

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

2. Conduct of the proceedings

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

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

The Commission essentially agreed with the applicant's position.

101. The Government, for their part, did not consider the length of the detention in question unreasonable. They stressed in the first place the complexity of the process of indicting the applicant and his three co-accused, owing to the operation of the Law of 30 December 1986 and the joint jurisdiction of the indictments divisions of Poitiers and Bordeaux (see paragraphs 17-18 and 24-30 above). They also pointed to the rhythm at which measures had been taken in the proceedings as showing that the authorities had consistently displayed due diligence, the two delays in the investigation being the result of the relinquishment of jurisdiction by the Bastia judge and the application of the Law of 30 December 1986 (*ibid.*). They criticised Mr Tomasi for having filed several appeals to the Court of Cassation, in particular against the first committal decision delivered on 27

May 1986 at Bordeaux (see paragraph 25 above), which, they contended, had substantially delayed the opening of the trial. Finally they emphasised the large number of applications for release lodged by the applicant and expressed the view that he was partly responsible for the length of his detention.

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

3. Conclusion

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

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

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

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

A. Government's preliminary objection

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

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

Delegate of the Commission, concludes from this that the Government are estopped from relying on their objection.

B. Merits of the complaint

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

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

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

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

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

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

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

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

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

2. The gravity of the treatment complained of

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

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

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

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

injuries to another. In the Government's view, the Commission's interpretation of Article 3 (art. 3) in this case was based on a misunderstanding of the aim of that provision.

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

3. Conclusion

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

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

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

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

A. Government's preliminary objection

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

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

B. Merits of the complaint

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

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

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

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

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

..."

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

The right to compensation claimed by Mr Tomasi therefore depended on the outcome of his complaint, in other words on the conviction of the perpetrators of the treatment complained of. It was a civil right, notwithstanding the fact that the criminal courts had jurisdiction (see, *mutatis mutandis*, the *Moreira de Azevedo v. Portugal* judgment of 23 October 1990, Series A no. 189, p. 17, para. 67).

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

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

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

(a) Period to be taken into consideration

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

(b) Reasonableness of the length of the proceedings

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

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

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

IV. APPLICATION OF ARTICLE 50 (art. 50)

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

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

Under this provision the applicant claimed compensation for damage and the reimbursement of costs.

A. Damage

127. Mr Tomasi distinguished three categories of damage:

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

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

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

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

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

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

B. Costs and expenses

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

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

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary objections;

2. Holds that there has been a violation of Article 5 para. 3, Article 3 and Article 6 para. 1 (art. 5-3, art. 3, art. 6-1);
3. Holds that the respondent State is to pay to the applicant, within three months, 700,000 (seven hundred thousand) French francs for damage and 300,000 (three hundred thousand) francs in respect of costs and expenses;
4. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 27 August 1992.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

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

R. R.
M.-A. E.

CONCURRING OPINION OF JUDGE DE MEYER

(Translation)

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

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

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

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

² Paragraph 115 of the present judgment.

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

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

⁵ Torture constitutes "an aggravated ... form of cruel, inhuman or degrading treatment or punishment": Article 1 para. 1 of Resolution 3452 (XXX), adopted by the General Assembly of the United Nations on 9 December 1975. See also the Ireland v. the United Kingdom judgment, cited above, pp. 66-67, para. 167, and the separate opinions of Judges Zekia, O'Donoghue and Evrigenis, *ibid.*, pp. 97, 106 and 136, as well as the above-mentioned Commission reports in the Greek case, p. 186, and the Ireland v. United Kingdom case, p. 388.