



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

COURT (CHAMBER)

CASE OF QUINN v. FRANCE

(Application no. 18580/91)

JUDGMENT

STRASBOURG

22 March 1995

In the case of Quinn v. France¹,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr Thór VILHJÁLMSSON,

Mr L.-E. PETTITI,

Mr R. MACDONALD,

Mr S.K. MARTENS,

Mr R. PEKKANEN,

Mr A.B. BAKA,

Mr L. WILDHABER,

Mr B. REPIK,

and also of Mr H. PETZOLD, *Registrar*,

Having deliberated in private on 22 September 1994 and 24 January and 25 February 1995,

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") on 9 December 1993, 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. 18580/91) against the French Republic lodged with the Commission under Article 25 (art. 25) by an American national, Mr Thomas Quinn, on 17 July 1991.

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

¹ The case is numbered 47/1993/442/521. 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.

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

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

3. The Chamber to be constituted included ex officio Mr 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 28 January 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr R. Macdonald, Mr N. Valticos, Mr S.K. Martens, Mr A.B. Baka, Mr L. Wildhaber and Mr B. Repik (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr I. Foighel, substitute judge, replaced Mr Valticos, who was unable to take part in the further consideration of the case. Mr Foighel was later likewise prevented from participating further in the case and was replaced by another substitute judge, Mr R. Pekkanen (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the French Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 25 May 1994 and the Government's memorial on 31 May. On 7 June the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

On 13 June 1994 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

5. On 19 September 1994, the day on which the hearing was due to be held, the President, noting that neither the Agent of the Government nor the Delegate of the Commission were present, decided to postpone the hearing to the following day. The hearing took place in public in the Human Rights Building, Strasbourg, on 20 September 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr P. TITIUN, magistrat, on secondment to
the Legal Affairs Department of the Ministry of Foreign
Affairs, *Agent*,

Mr G. BITTI, special adviser to
the European and International Affairs Department,
Ministry of Justice, *Counsel*;

- for the Commission

Mrs G.H. THUNE, *Delegate*;

- for the applicant

Mr N. MARYAN GREEN, avocat

at the Paris Court of Appeal and Barrister-at-Law,
London, *Counsel.*

The applicant's other two lawyers, Mr D. Bouthors and Mr F. Serres, were in Strasbourg on 19 September 1994, but were unable to attend the hearing on the following day.

6. The Court heard addresses by Mr Titium, Mrs Thune and Mr Maryan Green.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

7. Mr Thomas Quinn, who was born in New York in 1937, is an American national and at the material time lived in Paris. On 24 September 1992 the French Government extradited him to Switzerland.

A. The criminal proceedings in France

1. The judicial investigation

(a) The institution of criminal proceedings

8. Following ninety-three complaints laid by French investors, an investigation was opened in France in 1988. The persons concerned had been approached by brokers established in Switzerland and in Liechtenstein who had sold them at artificially inflated rates shares issued on the American market by sham companies. The sums collected were paid into accounts opened in Switzerland in the name of foreign companies, but the complainants were never able to realise their shares. Criminal proceedings were instituted against eleven persons, including the applicant. They were all foreign nationals.

9. Mr Quinn was arrested on 1 August 1988 in possession of two false Greek passports and was charged on the same day with fraud, offences under the legislation on the issuing of securities and forgery of administrative documents. On the following 29 November the investigating judge added to the initial charges the aggravating circumstance of fraud by a person having solicited the public for a savings scheme.

(b) The detention on remand

10. On the day of his arrest Mr Quinn had been remanded in custody at the Santé prison in Paris.

On three occasions, 30 November 1988, 23 March and 20 July 1989, the investigating judge extended the detention by four months at a time. He took the view that detention was the sole means of ensuring the appearance for trial of an accused, who was a foreign national, who had been arrested in possession of false passports and who had several residences outside France and a large number of accomplices.

(c) The decision releasing the applicant from custody

11. Mr Quinn appealed to the Indictment Division of the Paris Court of Appeal against the order of 20 July 1989 extending his detention on remand.

After holding a hearing on 2 August 1989, the Indictment Division set aside the contested order by a decision delivered in the applicant's absence at 9 a.m. on 4 August. It directed that he should be "released forthwith if he [was] not detained on other grounds" and gave the following reasons:

"At the present stage in the investigation, which has been conducted with due diligence, and given the evidence against him, detention no longer appears necessary for establishing the truth.

In view of the reimbursements which have been, or are in the process of being, effected, it is no longer required on grounds of public order.

Finally, the seizures carried out are such as to ensure that the appellant will appear for trial and in addition he provides guarantees as regards his place of residence and his movements."

This decision was immediately enforceable and no appeal was lodged against it.

12. The applicant was not released, however. His release was subject to the decision being notified by the public prosecutor responsible for its execution and to completion of the relevant formalities.

2. The trial proceedings

13. The applicant appeared before the Paris Criminal Court while in detention with a view to extradition (see paragraphs 16 and 17 below). On 10 July 1991 he was found guilty of fraud to the detriment of ninety-three persons and of organising a campaign to solicit the public in connection with transactions involving foreign securities in France, without prior authorisation. He was sentenced to four years' imprisonment and fined 300,000 French francs (FRF). The court ordered his detention (see paragraph 30 below).

14. The prosecuting authority and Mr Quinn appealed to the Paris Court of Appeal. In a judgment of 23 April 1992 that court found that the aggravating circumstance of soliciting the public for a savings scheme was

not made out and reduced the sentence to four years' imprisonment, one year of which was suspended. It ordered that he remain in detention (see paragraph 30 below).

15. The applicant, who had been in detention on remand from 1 August 1988 to 4 August 1989 and then for the duration of the court proceedings in the domestic case - a total of approximately one year and ten months -, was extradited to Switzerland on 24 September 1992 after having completed his sentence.

B. The proceedings for the applicant's extradition to Switzerland

1. Detention pending extradition

a) The applicant's arrest with a view to extradition

16. On 4 August 1989, towards 5.30 p.m., a Geneva investigating judge sent by fax to the Paris public prosecutor's office a request for the applicant's provisional arrest with a view to his extradition. The same request was transmitted through the intermediary of the International Criminal Police Organisation (Interpol) on 5 August and through diplomatic channels on 16 August. The applicant was described as "currently detained in the Santé prison in Paris, and today released on a provisional basis".

This document headed "fiche d'accompagnement" (covering note) was marked "very urgent, to be delivered in person to the addressee [a deputy public prosecutor], who is apprised of the matter".

It was accompanied by the international warrant issued by the Swiss judge for Mr Quinn's arrest on charges of professional fraud and forging securities. He was accused of having, with his accomplices, sold shares in American companies to nearly ten thousand investors throughout the world, deceiving them as to the value of the shares and using false identities to pay the sums in question into Swiss bank accounts. The total prejudice was estimated at over ten million dollars.

17. The Paris public prosecutor ordered the applicant's provisional arrest. Mr Quinn, who was still detained in the Santé prison, was arrested there. He was questioned by the prosecutor at around 8 p.m. and placed in detention with a view to extradition.

18. On 4 October 1989 the Paris Indictment Division - composed differently to the division that had ruled on the applicant's detention - served on the applicant the instrument on the basis of which he had been arrested.

(b) The applications for release

19. In the course of the extradition proceedings brought against him, Mr Quinn applied three times for his release, relying on each occasion on Article 5 (art. 5) of the Convention. He complained of the circumstances in which he had been arrested.

In its three decisions, given on 23 August 1989, 2 November 1989 and 19 December 1990, the Indictment Division dismissed his three applications, finding that the detention had been ordered in conformity with the provisions of the European Convention on Extradition. It justified its refusal to release the applicant on the grounds of the risk of his absconding and the lack of guarantees to ensure his presence in connection with the further proceedings. On the question of the length of his detention, it considered that the proceedings had been "conducted uninterruptedly and without delay".

In response to the applicant's complaint concerning the unlawfulness of the manner in which he had been placed in detention with a view to extradition, it observed that "the complaints in the pleadings on this point [were] a matter for French domestic law and [could not] be examined in extradition proceedings".

20. The applicant lodged three appeals on points of law. In a judgment of 19 December 1989 dismissing one of those appeals, the Court of Cassation stated as follows:

"... contrary to the claims of Thomas Quinn, the judges [of the Indictment Division] were not under a duty, in order to justify his continued detention, to refer solely to the provisions of Article 144 of the Code of Criminal Procedure [see paragraph 29 below], inasmuch as in extradition proceedings it is not their task to determine the merits of the charges brought against the person sought."

It observed in a judgment delivered on 15 April 1991 dismissing another appeal that the judges were not concerned with "the conditions and rules governing the foreign prosecution", and that "the decision of the Indictment Division of 4 August 1989 which ordered [the applicant's] release in the proceedings brought against him in France was entirely without force for the purposes of extradition proceedings".

2. The extradition**(a) The opinion of the Indictment Division**

21. On 16 August 1989 the principal public prosecutor interviewed the applicant with a view to formally establishing his identity.

22. In a preliminary decision of 2 November 1989 the Indictment Division sought additional information from the requesting State.

The information which it obtained concerning the complainants, the bank accounts and the acts constituting the fraudulent transactions was

communicated to the applicant at a hearing held on 17 January 1990. He pleaded that there had been an abuse of procedure on the part of the Swiss State. The Swiss authorities had sought to prevent the French court from exercising its jurisdiction.

23. On 14 March 1990 the Indictment Division of the Paris Court of Appeal ruled in favour of the applicant's extradition.

Expressing its view on the notions of "urgency" and "person sought" within the meaning of the European Convention on Extradition, it stated as follows:

"The assessment of the urgency is a matter for that State [Switzerland] and that urgency was justified by the fact that Quinn's release in the French proceedings had just been ordered;

The French authorities cannot be criticised for having warned the Swiss authorities as this conduct is natural and usual in the context of international judicial co-operation."

24. On 24 July 1990 the Court of Cassation dismissed as inadmissible under Article 16 of the Law of 10 March 1927 (see paragraph 28 below) Mr Quinn's appeal on points of law against the Indictment Division's opinion.

(b) The decision to extradite

25. On 24 January 1991 the Prime Minister granted the Swiss authorities' request for the applicant's extradition. The order was served on him on the following 19 February.

Mr Quinn applied to the Conseil d'Etat for a stay of execution and for review of the order, but his application was dismissed on 31 January 1992, on, inter alia, the following ground:

"... the fact that the arrest warrant was issued by a Swiss judge on the day on which the Indictment Division of the Paris Court of Appeal gave its decision on an application for release filed by Mr Quinn, who was facing charges in France, does not establish, contrary to the applicant's contention, that there was an abuse of procedure."

26. Mr Quinn, who had been in detention with a view to extradition from 4 August 1989 to 10 July 1991 - a period of one year, eleven months and six days - was surrendered to the Swiss authorities on 24 September 1992 (see paragraph 15 above).

II. RELEVANT LAW AND PRACTICE

A. International law

27. The European Convention on Extradition which was signed in Paris on 13 December 1957 and which came into force on 11 May 1986 provides as follows:

Article 1 - Obligation to extradite

"The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order."

Article 7 - Place of commission

"1. The requested Party may refuse to extradite a person claimed for an offence which is regarded by its law as having been committed in whole or in part in its territory or in a place treated as its territory.

..."

Article 8 - Pending proceedings for the same offences

"The requested Party may refuse to extradite the persons claimed if the competent authorities of such Party are proceeding against him in respect of the offence or offences for which extradition is requested."

Article 16 - Provisional arrest

"1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.

...

4. ... The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought.

..."

Article 18 - Surrender of the person to be extradited

"...

3. If the [extradition] request is agreed to, the requesting Party shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.

..."

Article 19 - Postponed or conditional surrender

"1. The requested Party may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against by that Party or, if he has already been convicted, in order that he may serve

his sentence in the territory of that Party for an offence other than that for which extradition is requested.

2. The requested Party may, instead of postponing surrender, temporarily surrender the person claimed to the requesting Party in accordance with conditions to be determined by mutual agreement by the Parties."

B. National law

1. Extradition

28. The Law of 10 March 1927 on the extradition of aliens provides, *inter alia*, as follows:

Article 1

"Where there is no treaty, the conditions and the procedure for and the effects of the extradition shall be determined by the provisions of the present Law.

The present Law shall also apply to questions which have not been dealt with by the treaties."

Article 5

"An extradition request shall not be granted:

...

3. Where the serious or less serious offences (*crimes ou délits*) have been committed in France or in the French colonial possessions;

..."

Article 8

"Where an alien is prosecuted or convicted in France and where the French Government is requested to extradite him in connection with a different offence, he shall not be surrendered until the criminal proceedings have been concluded, and, in the event of his conviction, until the sentence has been executed.

However, this provision shall not preclude the sending on a temporary basis of the alien to appear before the courts of the requesting State, subject to the express condition that he be returned as soon as the foreign courts have given judgment.

..."

Article 16

"[If the person concerned does not consent to being surrendered to the authorities of the requesting State], the Indictment Division, in a ruling against which no appeal lies, shall give its reasoned opinion on the extradition request.

..."

Article 17

"If the Indictment Division's reasoned opinion is opposed to granting the extradition request, that opinion shall be final and the request may not be granted."

Article 18

"If the division is not opposed, the Minister for Justice shall submit, where appropriate, for the signature of the President of the Republic, an order authorising the extradition. If, within a period of one month of the extradition order being served, the authorities of the requesting State have not taken charge of the person to be extradited, he shall be released and his extradition may not be sought on the same grounds."

*2. Detention on remand***29. Under Article 144 of the Code of Criminal Procedure:**

"... detention on remand may be ordered or continued:

1. Where the detention on remand of the accused is the sole means of preserving evidence or material clues or of preventing either pressure being brought to bear on the witnesses or the victims, or collusion between the accused and accomplices;

2. Where this detention is necessary to preserve public order from the prejudice caused by the offence or to protect the accused, to put an end to the offence or to prevent its repetition or to ensure that the accused remains at the disposal of the judicial authorities.

..."

Article 145-1 of the Code of Criminal Procedure reads as follows:

"In cases involving 'less serious' criminal offences (*matière correctionnelle*) detention on remand may not exceed four months. However, at the end of this period, the investigating judge may extend the detention by an order giving reasons as indicated in the first paragraph of Article 145. No extension may be ordered for a period exceeding four months.

Where the person charged has not previously been sentenced for a serious or less serious offence (*crime ou délit*) to a non-suspended term of imprisonment exceeding one year and where the sentence he risks does not exceed five years, the extension of detention provided for in the preceding paragraph may be ordered only once and for a period not exceeding two months.

In other cases, the person charged may not be kept in detention for longer than one year. However, in exceptional circumstances, the investigating judge may decide at the end of that period to extend the detention, for a period not exceeding four months, by a reasoned order made in accordance with the provisions of the first and fifth paragraphs of Article 145, it being possible to renew such an order under the same procedure. Nevertheless the person charged may not be kept in detention for more than two years where the sentence he risks does not exceed five years.

..."

30. As the execution of judgments is stayed during the periods prescribed for lodging appeals, the courts may order at the trial or appeal hearing that the convicted person remain in detention on remand (Articles 464-1, 465 and 569 of the Code of Criminal Procedure). This period of detention is deducted in full from the sentence imposed (Article 24 of the Code of Criminal Procedure).

31. A person detained following a request for extradition from a foreign government is subject to the same rules as a remand prisoner (Article D 507 of the Code of Criminal Procedure).

32. The decision of the court which rules on an application for release is immediately enforceable (Article 148-2 of the Code of Criminal Procedure, second sub-paragraph); responsibility for its execution lies with the principal public prosecutor (Article 207 of the Code of Criminal Procedure).

33. Prior to his release, a remand prisoner facing charges must make a statement giving his address (Article 148-3 of the Code of Criminal Procedure), before the investigating judge if the latter has had him taken out of prison or otherwise before the governor of the prison. In so far as the governor is required to obtain a declaration of the detainee's address before releasing him, the investigating judge must inform him, when transmitting the order for his release, whether the accused has already given an address in his presence.

On release, each released detainee is issued with a release order (Article D 288 of the Code of Criminal Procedure). Where several detainees are due for release on the same day, precautions are to be taken to ensure that they do not meet each other, but the application of this rule must not have the effect of delaying beyond midday their release on the day on which they are to be released (Article D 289 of the Code of Criminal Procedure).

PROCEEDINGS BEFORE THE COMMISSION

34. Mr Quinn applied to the Commission on 17 July 1991. He complained of the unlawfulness and the length of his detention on remand, which he considered to be incompatible with Article 5 paras. 1 and 3 (art. 5-1, art. 5-3) of the Convention, read on its own and in conjunction with

Article 18 (art. 5+18). By placing him in detention with a view to extradition, the French authorities had been simply seeking to ensure that he appeared for trial in the domestic proceedings, despite the Indictment Division's decision ordering his immediate release.

35. The Commission declared the application (no. 18580/91) admissible on 8 January 1993. In its report of 22 October 1993 (Article 31) (art. 31), it expressed the opinion that there had been a violation of Article 5 para. 1 (art. 5-1) of the Convention on account of the applicant's detention on 4 August 1989 from 9 a.m. to 8 p.m. (unanimously), and of his detention with a view to extradition (thirteen votes to four). On the other hand, it considered that there had been no breach of Article 5 para. 3 (art. 5-3) (unanimously). The full text of its opinion and of the three separate opinions contained in the report is reproduced as an annex to this judgment³.

FINAL SUBMISSIONS BY THE GOVERNMENT TO THE COURT

36. At the hearing the Government confirmed the submissions made in their memorial, in which they "[requested] the Court to hold that there [had] been no violation of Article 5 paras. 1 and 3 (art. 5-1, art. 5-3) of the Convention".

AS TO THE LAW

I. INTRODUCTION

37. Mr Quinn maintained that he had been arbitrarily kept in detention on 4 August 1989 in order to leave the Paris public prosecutor's office time to instigate the setting in motion of the extradition proceedings and thus block the decision ordering the applicant's immediate release taken the same morning by the Indictment Division of the Paris Court of Appeal. His detention pending extradition had simply amounted to the extension, on a different legal basis, of the period of remand detention which had just come to an end in the proceedings conducted in France.

Relying on Article 5 paras. 1 and 3 and Article 18 (art. 5-1, art. 5-3, art. 18) of the Convention taken together, the applicant alleged an abuse of the

³ Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 311 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

extradition procedure for purposes relating to the investigation in France and complained of the unlawfulness of his detention in connection with that procedure and of the length of his pre-trial custody.

II. ALLEGED VIOLATIONS OF ARTICLE 5 PARA. 1 (art. 5-1) OF THE CONVENTION

38. According to the applicant, his continued detention on 4 August 1989 and his subsequent detention with a view to extradition infringed Article 5 para. 1 (art. 5-1) of the Convention, which, in so far as is relevant in the present case, provides as follows:

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. The detention on 4 August 1989

39. Mr Quinn maintained that he should have been released "forthwith" in pursuance of the decision given that very morning and that he had therefore been arbitrarily kept in detention so that he could be rearrested at the request of the Swiss authorities.

40. That was also the view of the Commission.

41. The Government explained that there had inevitably been some delay in releasing the applicant on account of the formalities, which took longer to complete during the judicial vacations.

42. The Court reiterates that the list of exceptions to the right to liberty secured in Article 5 para. 1 (art. 5-1) is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim and purpose of that provision (art. 5-1), namely to ensure that no one is arbitrarily deprived of his or her liberty (see, *inter alia*, the *Van der Leer v. the Netherlands* judgment of 21 February 1990, Series A no. 170-A, p. 12, para. 22, and the

Wassink v. the Netherlands judgment of 27 September 1990, Series A no. 185-A, p. 11, para. 24).

The Court acknowledges that some delay in executing a decision ordering the release of a detainee is understandable. It notes, however, that in the instant case the applicant remained in detention for eleven hours after the Indictment Division's decision directing that he be released "forthwith", without that decision being notified to him or any move being made to commence its execution.

Mr Quinn's continued detention on 4 August 1989 was clearly not covered by sub-paragraph (c) of paragraph 1 of Article 5 (art. 5-1-c) and did not fall within the scope of any other of the sub-paragraphs of that provision (art. 5-1).

43. There has accordingly been a breach of Article 5 para. 1 (art. 5-1) in this respect.

B. The detention with a view to extradition

44. Mr Quinn contested in addition the lawfulness of his detention pending extradition, on account not only of the circumstances of his arrest on the evening of 4 August 1989, but also of the length of his deprivation of liberty. In view of the fact that extradition proceedings were generally conducted with great rapidity, a period of almost two years disclosed an abuse of the extradition procedure. The true aim of the French authorities had, he maintained, been to keep him at their disposal for as long as was necessary to pursue the investigation in France.

45. The Commission in substance accepted the applicant's submission.

46. The Government contested it. They pointed out that the European Convention on Extradition entailed for the States parties the obligation to extradite. They maintained that the detention pending extradition, which had been the only means of ensuring that it would be possible to surrender the applicant to the requesting State, had been ordered in the present case in conformity with the rules governing extradition, as the French courts had found. The sole purpose of that detention had been to hand the applicant over to the judicial authorities of the requesting State.

In view of the urgency of the situation - Mr Quinn's imminent release - the Swiss authorities had sent a fax on 4 August 1989 requesting the applicant's provisional arrest. The proceedings thereafter had been conducted with the diligence that is implicitly required by Article 5 para. 1 (f) (art. 5-1-f) and the attention of the Swiss authorities had been drawn to the time spent in detention so that it could be deducted from any sentence imposed. Finally, the applicant had lodged numerous appeals, which he had argued at length in the national courts, and this had contributed to prolonging his detention.

47. The Court considers that the detention with a view to extradition was in principle justified under sub-paragraph (f) of Article 5 para. 1 (art. 5-1-f).

That provision (art. 5-1) requires in the first place that the detention be "lawful", which includes the condition of compliance with a procedure prescribed by law. The Convention here refers back essentially to national law, but it also requires that any deprivation of liberty be in conformity with the purpose of Article 5 (art. 5), namely to protect individuals from arbitrariness (see the Van der Leer and Wassink judgments previously cited). The national courts, which are in a better position than the Convention institutions to determine whether domestic law has been complied with, found that the contested detention was lawful in its initial stage and as regards its purpose. They could legitimately take account of the requirements of international mutual assistance in the judicial field.

Unlike the Commission, the Court does not discern in the present case any evidence to suggest that the detention pending extradition pursued an aim other than that for which it was ordered and that it was pre-trial detention in disguise. In particular the circumstances of Mr Quinn's arrest and the fact that proceedings were conducted concurrently cannot in themselves warrant the conclusion that there was abuse, for purposes relating to national law, of the extradition procedure and accordingly that the detention ordered in response to the request of the Geneva investigating judge was unlawful.

48. The Court notes nevertheless that the applicant's detention with a view to extradition was unusually long. He was detained in connection with the extradition proceedings from 4 August 1989 to 10 July 1991, almost two years (see paragraph 26 above). Thereafter he served the sentence imposed by the Paris Court of Appeal until 24 September 1992, on which date he was surrendered to the Swiss authorities pursuant to the order of 24 January 1991.

It is clear from the wording of both the French and the English versions of Article 5 para. 1 (f) (art. 5-1-f) that deprivation of liberty under this sub-paragraph will be justified only for as long as extradition proceedings are being conducted. It follows that if such proceedings are not being prosecuted with due diligence, the detention will cease to be justified under Article 5 para. 1 (f) (art. 5-1-f). The Court notes that, at the different stages of the extradition proceedings, there were delays of sufficient length to render the total duration of those proceedings excessive: the first decision on the merits, a preliminary decision, was given on 2 November 1989, three months after the applicant had been placed in detention pending extradition, and the extradition order was not made until 24 January 1991, ten months after the Indictment Division's favourable opinion (see paragraphs 22 and 25 above). The remedies of which Mr Quinn availed himself over this period (three appeals on points of law against the decisions dismissing

applications for release and one appeal on points of law against the Indictment Division's opinion - see paragraphs 20 and 23 above) did not significantly delay the proceedings.

The detention with a view to extradition continued until 10 July 1991, well after the adoption of the extradition order, as the applicant's surrender to the Swiss authorities was postponed, in accordance with Article 19 para. 1 of the European Convention on Extradition, on account of the criminal proceedings conducted in France at the same time. It is not the Court's role to determine what measures the national authorities should have taken in these circumstances to ensure that the detention pending extradition, which had already exceeded a reasonable time by 24 January 1991, did not last even longer, especially in view of the fact that such detention could not be deducted from the sentence imposed in France.

49. There has accordingly been a violation of Article 5 para. 1 (art. 5-1) of the Convention on this point too.

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

50. Mr Quinn also complained of the total length of his pre-trial detention. It had breached Article 5 para. 3 (art. 5-3) of the Convention, 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 brought promptly before a judge or other officer authorised by law to exercise judicial power and 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. Period to be taken into consideration

51. According to the applicant, his detention with a view to extradition had served solely to keep him in custody for the needs of the investigation in France. His remand custody had begun on 1 November 1988 and ended on 10 July 1991 with the judgment of the Paris Criminal Court.

52. The Government expressed a view only on the first period of detention, from 1 August 1988 to 4 August 1989.

53. Like the Commission, the Court reiterates that Article 5 para. 3 (art. 5-3) refers only to paragraph 1 (c) of Article 5 (art. 5-1-c) (see the *De Wilde, Ooms and Versyp v. Belgium* judgment of 18 June 1971, Series A no. 12, p. 39, para. 71). It does not therefore apply to detention with a view to extradition within the meaning of Article 5 para. 1 (f) (art. 5-1-f).

The position is different with regard to the applicant's detention on remand in connection with the French proceedings from 1 August 1988 to 4 August 1989, a period of one year.

B. Reasonableness of the length of detention

54. The Government contended that the period in question had not exceeded the limits of what was reasonable and had been justified by the international dimension of the alleged offences and the danger of the applicant's absconding.

55. The Commission shared that view.

56. In the light of the circumstances of the case, the Court does not regard this period as excessive. In particular, it does not discern any negligence on the part of the authorities, who acted with the necessary promptness. There has therefore been no violation of Article 5 para. 3 (art. 5-3).

IV. ALLEGED VIOLATION OF ARTICLE 18 (art. 18) OF THE CONVENTION

57. Finally, Mr Quinn accused the French authorities of having abused the extradition procedure by using it for a purpose other than that for which it was intended. Their principal objective had been to obstruct his release and that had constituted a breach of Article 18 (art. 18) of the Convention, which provides as follows:

"The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

That provision (art. 18) afforded specific protection and could be invoked on its own without reference to the other Articles of the Convention.

58. Neither the Government nor the Commission expressed a view on this complaint.

59. Having already found that there is no evidence to substantiate the claim of an abuse of procedure, the Court does not consider it necessary to examine the same facts from the point of view of Article 18 (art. 18).

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

60. Under Article 50 (art. 50),

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

A. Damage

61. Mr Quinn, relying on the practice of remission of sentence, argued that he had spent an additional eighteen months in prison. He claimed compensation of FRF 100,000 per month of unlawful detention.

62. The Government, who contested the legal basis of the claim, considered that the finding of a violation would constitute sufficient reparation for the non-pecuniary damage.

63. The Delegate of the Commission was of the opinion that the applicant was entitled to just satisfaction, but did not put forward a figure.

64. The Court takes the view that the applicant's continued detention on 4 August 1989 caused him non-pecuniary damage justifying the award of the sum of FRF 10,000. For any prejudice that he may have subsequently sustained on account of the excessive length of the detention pending extradition, it awards him FRF 50,000.

B. Costs and expenses

65. Mr Quinn sought the reimbursement of his costs and expenses, namely FRF 362,000 (Mr Bouthors: FRF 112,000; Mr Serres: FRF 250,000) for the proceedings conducted in the French courts and FRF 285,000 for the proceedings before the Convention institutions.

66. The Government regarded the sums claimed as excessive; the French authorities ought not to have to bear the consequences of the decision to have recourse to several lawyers.

67. The Delegate of the Commission did not express a view on this matter.

68. Having regard to the evidence available to it and to its case-law in this field, the Court awards the applicant FRF 150,000 for his costs and expenses, principally those incurred in Strasbourg.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 5 para. 1 (art. 5-1) of the Convention on account of the applicant's continued detention on 4 August 1989;
2. Holds that there has been a violation of Article 5 para. 1 (art. 5-1) of the Convention by reason of the length of the applicant's detention with a view to extradition;

3. Holds that there has been no violation of Article 5 para. 3 (art. 5-3) of the Convention;
4. Holds that it is not necessary to examine the case from the point of view of Article 18 (art. 18) of the Convention;
5. Holds that the respondent State is to pay the applicant, within three months, 60,000 (sixty thousand) French francs for non-pecuniary damage and 150,000 (one hundred and fifty thousand) francs for costs and expenses;
6. 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 22 March 1995.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar