



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

COURT (CHAMBER)

CASE OF SCOTT v. SPAIN

(Application no. 21335/93)

JUDGMENT

STRASBOURG

18 December 1996

In the case of Scott v. Spain¹ (1),

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

Mr R. RYSSDAL, *President*,

Mr T. VILHJÁLMSSON,

Mr A. SPIELMANN,

Mr J.M. MORENILLA,

Mr A.B. BAKA,

Mr G. MIFSUD BONNICI,

Mr D. GOTCHEV,

Mr B. REPIK,

Mr K. JUNGWIERT,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 2 September and 30 November 1996,

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 18 September 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 21335/93) against the Kingdom of Spain lodged with the Commission under Article 25 (art. 25) by a British national, Mr Christopher Ian Scott, on 2 September 1992.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Spain 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

¹ The case is numbered 84/1995/590/676. 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) (1 October 1994) 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.

the respondent State of its obligations under Article 5 paras. 1 and 3 of the Convention (art. 5-1, art. 3).

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).

The Government of the United Kingdom, having been informed by the Registrar of their right to intervene (Article 48 (b) of the Convention and Rule 33 para. 3 (b)) (art. 48-b), did not indicate any intention of so doing.

3. The Chamber to be constituted included *ex officio* Mr J.M. Morenilla, the elected judge of Spanish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 4 (b)). On 29 September 1995, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr A. Spielmann, Mr A.B. Baka, Mr G. Mifsud Bonnici, Mr D. Gotchev, Mr B. Repik and Mr K. Jungwiert (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Spanish 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 Government's memorial on 3 April 1996 and the applicant's memorial on 13 May 1996.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 28 August 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr J. BORREGO BORREGO, Head of the Legal Department
for the European Commission and Court of Human
Rights, Ministry of Justice, *Agent;*

(b) for the Commission

Mr J. MUCHA, *Delegate;*

(c) for the applicant

Mr E. FITZGERALD QC, *Counsel,*
Mr S. JAKOBI, *Solicitor.*

The Court heard addresses by Mr Mucha, Mr Fitzgerald and Mr Borrego Borrego.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

6. Mr Scott is a British citizen born in 1958. He is currently detained in Her Majesty's Prison, Leicester.

7. On 5 March 1990 a Finnish national, Ms T., made a statement to the police in Puerto de la Cruz, Tenerife, Canary Islands, in which she alleged that the applicant had raped her the night before. According to Ms T., the applicant had threatened and beaten her, forcing her to undress and to have sexual intercourse with him. Ms T. underwent a medical examination and on 9 March 1990 flew back to Finland.

8. In the evening of 5 March 1990, on the strength of Ms T.'s description, the applicant was located by the police; he attempted to flee but was finally arrested. He had a false passport and was suffering from serious alcoholic intoxication requiring medical attention. On 7 March 1990, assisted by a lawyer and an interpreter, he made a statement to the police in which he denied the rape allegations. When the records were consulted, it was found that the applicant had escaped from Sudbury Prison, West Midlands, on 22 December 1989 and that an international warrant for his arrest for the murder of his father had been issued against him on 31 January 1990 by a judge at Birmingham Crown Court. In the evening of 7 March 1990 the applicant was brought before the investigating judge (juez de instrucción).

9. On 8 March 1990, again assisted by a lawyer and an interpreter, the applicant denied the rape allegations before investigating judge no. 1 in Puerto de la Cruz. In a decision (auto de prisión) of the same date the judge held, on the basis of Articles 503 and 504 of the Code of Criminal Procedure (Ley de Enjuiciamiento Criminal - see paragraphs 35 and 36 below), that there was sufficient reason to believe that the applicant was involved in the commission of an offence that would attract a substantial prison sentence (see paragraph 33 below). Having regard to the circumstances of the case and to the existence of an international arrest warrant (see paragraph 8 above), the investigating judge ordered Mr Scott's detention pending trial.

10. On 23 March 1990 the relevant judicial authority in extradition matters, central investigating judge (juez central de instrucción) no. 4 of the Audiencia Nacional, Madrid, also ordered the applicant's detention on the basis of the international arrest warrant and of an undertaking by the United Kingdom authorities to file a request for extradition (section 8 of the Extradition Act - see paragraph 38 below). In so doing, the central investigating judge referred to Articles 503 and 504 of the Code of Criminal Procedure (see paragraphs 35 and 36 below) and took into account the

seriousness of the offence and the prison sentence it would attract under Spanish law (see paragraph 34 below). A formal request for extradition was filed on 27 April 1990. It was accompanied by extensive evidence incriminating the applicant.

11. On 25 June 1990 an international letter of request for judicial cooperation was sent to the relevant authority in Finland with a view to obtaining a further statement from the alleged victim of the rape and additional medical evidence.

12. On 26 November 1990 the public prosecutor (Ministerio Fiscal) recommended the applicant's extradition. Guarantees were requested from the United Kingdom authorities to the effect that, should the extradition be granted and the applicant be convicted in England, the final sentence would not exceed thirty years' imprisonment (the maximum term of imprisonment under Spanish legislation). On 2 January 1991 the British Embassy in Madrid wrote to the Audiencia Nacional that in the applicant's case the sentence actually served upon conviction for murder was not likely to be more than ten years. A hearing was subsequently held in the Audiencia Nacional, in the course of which the applicant denied the murder allegations and resisted extradition.

13. By a decision (auto) of 22 February 1991 a section of the Criminal Division of the Audiencia Nacional accepted the guarantees given by the United Kingdom authorities and ordered that the applicant should be extradited to stand trial for the murder of his father. This extradition order was only to be executed after the applicant had served any outstanding time of the sentence that might eventually be imposed on him in Spain for the rape offence (see paragraph 41 below). Furthermore, the time spent by the applicant in prison pending extradition was to be deducted from the sentence that would eventually be passed on him by the English courts in the murder case (see paragraph 42 below).

14. The applicant lodged an appeal (recurso de súplica) with the full court of the Criminal Division of the Audiencia Nacional. In a decision of 28 May 1991 the appeal was dismissed. On 28 June 1991 the Cabinet (Consejo de Ministros) decided not to exercise its discretion not to execute the extradition order.

15. In the meantime, on 7 March 1991, the investigating judge in Puerto de la Cruz had decided to extend the applicant's detention pending trial in the rape case under Article 504 of the Code of Criminal Procedure (see paragraph 36 below). In so doing, the investigating judge also took into account the fact that the applicant's extradition was pending.

16. In May 1991 Mr Scott wrote to the Audiencia Nacional that he was willing to be extradited in order to get medical treatment in the United Kingdom, although it would appear that he later abandoned this idea. On 24 June 1991 the public prosecutor recommended that the applicant be kept in

detention pending his trial for rape unless he could be temporarily handed over to the United Kingdom authorities.

17. On 6 March 1992 the British Embassy in Madrid wrote to the Audiencia Nacional indicating that, in the event of the applicant's being temporarily handed over to the United Kingdom, his re-extradition to Spain could not be guaranteed.

18. On that same date, that is to say roughly two years after the applicant had first been detained (see paragraph 9 above), the investigating judge in Puerto de la Cruz ordered the applicant's provisional release (*libertad provisional*) in connection with the rape case, as required by Article 504 of the Code of Criminal Procedure (see paragraph 36 below). He was, however, kept in detention under orders made in the extradition proceedings.

19. On 17 March 1992 the Audiencia Nacional, taking 23 March 1990 as the date of the beginning of the applicant's detention for the extradition proceedings (see paragraph 10 above), decided to extend his detention under Article 504 of the Code of Criminal Procedure and section 10 (3) of the Extradition Act (see paragraphs 36, 37 and 40 below) for a period not exceeding two years, that is until 23 March 1994. The Audiencia Nacional had previously heard the public prosecutor and the applicant, the former having submitted that, given the impossibility of temporarily handing the applicant over to the United Kingdom authorities, his extradition should not take place "before he ha[d] discharged his criminal liabilities in Spain", with reference to the rape case.

20. The applicant lodged an appeal (*recurso de súplica*) against this decision but on 18 June 1992 a full court of the Criminal Division of the Audiencia Nacional dismissed the appeal on the ground that he had been detained in the extradition case on 23 March 1990, independently of his earlier detention for a different matter, and that the risk of his absconding was considerable. In his submissions the public prosecutor had again referred to the case pending in Puerto de la Cruz.

21. Another application for release by the applicant on 7 September 1992 was rejected in similar terms by the Audiencia Nacional on 5 October 1992. Although the application had been addressed to the Audiencia Nacional, the applicant made ample reference to the proceedings before the Puerto de la Cruz investigating judge.

22. On 6 December 1992, following a further application by Mr Scott, the Audiencia Nacional requested the investigating judge in Puerto de la Cruz to supply information as to whether the applicant could be extradited. The Court's case file does not contain any reply.

23. The applicant lodged an *amparo* appeal with the Constitutional Court (see paragraph 32 below) against the Audiencia Nacional's decisions of 17 March 1992 and 18 June 1992 on his detention pending extradition. The appeal was rejected after summary proceedings in a decision (*auto*) of 6

May 1993. On the merits the Constitutional Court stated that the applicant had been detained in the extradition proceedings on 23 March 1990, so that the Audiencia Nacional's decision of 17 March 1992 to extend detention for two more years as of that date was legally correct as the earlier period spent in prison by the applicant was unrelated to the new detention.

24. Meanwhile, in a decision (*auto de procesamiento*) of 2 February 1993, the investigating judge in Puerto de la Cruz had formally charged the applicant with, *inter alia*, rape and forgery of documents.

25. On 8 February 1993 the investigating judge renewed his request to have a further statement by the complainant through the channels of international judicial cooperation (see paragraph 11 above). The requested statement and two medical certificates, all in Finnish, were received in Puerto de la Cruz on 29 April 1993. A Spanish translation did not become available until two months later. The statement - which was taken at a court hearing in Tuusula, Finland, on 14 December 1992 - confirmed Ms T.'s original allegations (see paragraph 7 above). The medical certificates showed that Ms T. had received prolonged psychiatric treatment after her return from Tenerife.

On 25 August 1993 the applicant's detention was again ordered in the rape case. The applicant was subsequently committed for trial.

26. On 26 November 1993 the public prosecutor made his pre-trial submissions (*conclusiones provisionales*). On the basis of the medical evidence available, he sought a prison sentence of sixteen years in respect of the rape offence and a further prison sentence of four months and a fine of 100,000 pesetas for the offence of forgery of documents.

27. A hearing was held during which Ms T. and court-appointed medical experts gave evidence.

In a judgment of 21 March 1994 the Audiencia Provincial of Santa Cruz de Tenerife acquitted the applicant on the rape charge on the ground that the only evidence incriminating him was Ms T.'s statements, which contained many inconsistencies. The Audiencia Provincial accepted the opinion of the experts present at the hearing that the medical evidence did not sustain the allegation of forcible sexual intercourse.

With respect to the forgery offence the applicant was convicted and sentenced as charged.

28. On 16 March 1994, as the applicant's detention was approaching the statutory maximum of four years (see paragraph 36 below), the Audiencia Nacional had issued an order releasing the applicant from detention in the extradition proceedings. However, on learning of the applicant's acquittal in the rape trial and of his imminent release, the Audiencia Nacional immediately ordered the applicant's continued detention pending extradition.

29. On 27 March 1994 the applicant was handed over to the United Kingdom authorities, pursuant to the international arrest warrant and the

Audiencia Nacional's decision of 22 February 1991 allowing extradition (see paragraph 13 above).

30. The applicant had spent a total of two years, six months and twenty-nine days under the different orders for detention pending trial on the rape charge and exactly four years in connection with the extradition proceedings.

31. On 9 November 1995, following a trial at Birmingham Crown Court, Mr Scott was convicted of the murder of his father. He was sentenced to life imprisonment. The trial judge recommended a "tariff period" (see paragraph 43 below) of twelve years.

II. RELEVANT DOMESTIC LAW

A. The Constitution

32. Article 17 of the Constitution guarantees the right to liberty and security of person and sets out the conditions under which a person's liberty may be restricted. By paragraph 4 of this provision, a habeas corpus procedure shall be provided for in a statute which shall also determine the maximum duration of detention pending trial.

Regarded as fundamental, Article 17 rights may be the subject of an individual appeal to the Constitutional Court (*recurso de amparo*).

B. The Criminal Code

33. Under Article 429 of the Criminal Code in force at the material time, rape was punishable with a term of imprisonment ranging from twelve years and one day to twenty years (*reclusión menor*).

34. Under Article 405 of the Criminal Code, killing one's father or mother (*parricidio*) was punishable with a term of imprisonment ranging from twenty years and one day to thirty years (*reclusión mayor*).

C. The Code of Criminal Procedure

35. Under Article 503 of the Code of Criminal Procedure,

"The following conditions must be satisfied before pre-trial detention can be ordered:

1. It must have been established that an act which may constitute an offence [*delito*] has been committed.

2. The offence must be punishable by more than six years' imprisonment [*prisión menor*] or, if the term of imprisonment is shorter, the judge must consider it necessary

to remand the accused in custody in the light of his criminal record, the circumstances of the offence, the prejudice to public order it has caused or the frequency with which similar acts have been committed ...

3. There must be sufficient reasons for considering the person to be remanded in custody criminally responsible for the offence."

36. By Article 504 of the Code of Criminal Procedure, detention pending trial shall not exceed one year where an offence is punishable with a term of imprisonment ranging from six months and one day to six years (prisión menor) and shall not exceed two years if the applicable sentence is heavier.

If, however, the case cannot be tried within that period and there is a risk that the accused may evade justice, Article 504 of the Code of Criminal Procedure provides that detention pending trial may be prolonged up to two and four years respectively. A reasoned decision (auto) to this effect may only be issued after the competent court has heard the accused and the public prosecutor.

37. Under Article 528 para. 1 of the Code of Criminal Procedure, detention pending trial may last for only as long as the original reasons remain valid.

D. Rules on detention pending extradition

38. Extradition proceedings come within the jurisdiction of the Audiencia Nacional in Madrid irrespective of where the requested person has been detained (section 65 (4) of the Judicature Act - Ley Orgánica del Poder Judicial). In such cases preliminary proceedings fall to the relevant central investigating judge (juez central de instrucción) attached to the Audiencia Nacional, likewise in Madrid (section 88 of the Judicature Act and section 8 (2) of the Extradition Act 1985).

39. Under section 8 of the Extradition Act, the detention of a person with a view to his or her extradition may in certain circumstances be sought by a State even before a formal request for extradition is lodged where the requesting State undertakes that the said request will be made within the following forty days. The detainee must be brought before the relevant central investigating judge within twenty-four hours of his or her arrest.

40. Under section 10 (3) of the Extradition Act, "while extradition proceedings are pending, the maximum term of detention of the requested person and his or her rights as a detainee shall be determined, where not laid down in this Act, according to the relevant provisions of the Code of Criminal Procedure".

41. By section 19 (2) of the Extradition Act, "if the requested person is under investigation or has been convicted by a Spanish court ... his or her delivery may be deferred until his or her criminal liabilities in Spain have

been discharged or he or she can be handed over temporarily or finally in accordance with such conditions as may be agreed with the requesting State".

Article 18 of the Extradition Treaty between the United Kingdom and the Kingdom of Spain of 22 July 1985 contains a similar provision. The Treaty came into force on 1 July 1986.

42. Section 18 (1) (2) of the Extradition Act requires, *inter alia*, that extradition be made subject to the time spent in detention pending extradition by the requested person being deducted from the sentence that would eventually be passed on him or her by the requesting State.

E. Life sentences in England.

43. Under English law murder carries a mandatory sentence of life imprisonment (Murder (Abolition of Death Penalty) Act 1965). A person convicted of manslaughter may be sentenced to life imprisonment at the discretion of the trial judge. In both cases release on licence can only be granted after a minimum period deemed necessary to satisfy the requirements of retribution and deterrence ("the tariff period") has been served.

PROCEEDINGS BEFORE THE COMMISSION

44. Mr Scott applied to the Commission on 2 September 1992. He relied on Article 5 paras. 1 (c) and 3 of the Convention (art. 5-1-c, art. 5-3), complaining that he had been unlawfully detained for an unreasonably long period of time. He further complained of breaches of Articles 5 para. 4, 6, 8 and 13 of the Convention (art. 5-4, art. 6, art. 8, art. 13).

45. On 22 February 1995 the Commission declared the application (no. 21335/93) admissible as far as the complaints under Article 5 paras. 1 (c) and 3 (art. 5-1-c, art. 5-3) were concerned. In its report of 4 July 1995 (Article 31) (art. 31), it expressed the opinion that there had been no violation of Article 5 para. 1 (c) (art. 5-1-c) (ten votes to three) and that there had been a violation of Article 5 para. 3 of the Convention (art. 5-3) (twelve votes to one). The full text of the Commission's opinion and of the three separate opinions contained in the report is reproduced as an annex to this judgment³.

³ For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-VI), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT

46. At the hearing, the applicant invited the Court to declare that there had been a violation of Article 5 paras. 1 and 3 (art. 5-1, art. 5-3).

The Government, for their part, submitted that, in the circumstances of the case, the length of the applicant's detention could not be considered unreasonable.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 PARA. 1 OF THE CONVENTION (Art. 5-1)

47. Mr Scott complained of the unlawfulness of his detention under Article 5 para. 1 of the Convention (art. 5-1), which, in so far as relevant, reads:

"1. 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 ... against whom action is being taken with a view to ... extradition."

A. Preliminary observations

48. Before the Court, Mr Scott complained that the facts relating to his detention in Spain between March 1990 and March 1994 disclosed a breach of Article 5 para. 1 (art. 5-1) in relation to both his detention on remand and his detention with a view to extradition, and a further breach of paragraph 3 of the same provision (art. 5-3) with regard to the length of his detention on remand.

The applicant submitted that as from 28 June 1991 - date when the Spanish Cabinet authorised his extradition to the United Kingdom (see

paragraph 14 above) - the only justification for his continued detention was his alleged involvement in the rape case.

49. The Commission considered the lawfulness of the applicant's detention under Article 5 para. 1 (c) (art. 5-1-c). As to its length, the Commission only examined the applicant's detention on remand.

50. The Government submitted that different considerations applied to the two different sets of proceedings Mr Scott was involved in: suspicion of rape and request for extradition. In both cases his deprivation of liberty had been lawful. The long period of detention that followed was also justified; in compliance with the appropriate legislation (see paragraph 41 above), the Spanish authorities were entitled to defer the execution of the order for the applicant's extradition as long as his trial in the rape case was still pending. In view of the wording of Article 5 para. 3 (art. 5-3) (see paragraph 67 below), however, the Court was only entitled to examine the period spent by the applicant in detention pursuant to orders made in the rape proceedings.

51. The Court notes that the applicant was first arrested on 5 March 1990 under suspicion of having raped a Finnish woman (see paragraph 8 above). Subsequently, central investigating judge no. 4 ordered that the applicant be kept in custody pending the resolution of a request for extradition (see paragraph 10 above). On 22 February 1991 the Audiencia Nacional ordered the applicant's extradition, as requested by the United Kingdom authorities. However, this extradition order was only to be executed after the determination of the rape case (see paragraph 13 above).

The Court further notes that, after the applicant's release had been ordered in relation to the rape case (see paragraph 18 above) and after an unsuccessful attempt to hand over the applicant to the British authorities on a temporary basis, the Audiencia Nacional chose to extend the applicant's detention pending extradition (see paragraph 19 above). It is common ground that the basis for this decision, as well as for the subsequent orders of 5 October and 6 December 1992 (see paragraphs 21 and 22 above), was that the investigation into the rape allegations was still pending. Furthermore, the sole argument used by the public prosecutor in recommending Mr Scott's continued detention was the existence of that investigation (see paragraphs 16, 19 and 20 above).

52. From the foregoing the Court concludes that for all but the few days that elapsed between the applicant's acquittal in the rape case and his delivery to the United Kingdom authorities, the investigation into the rape charges provided at all times, in whole or in part, justification for the applicant's ongoing detention. This was unquestionably the case in the periods comprised between 5 March 1990 and 6 March 1992 and again between 25 August 1993 and 21 March 1994, where detention had been ordered in the rape proceedings. However, even during the period going from 6 March 1992 to 25 August 1993, where technically the applicant was being detained exclusively on the strength of orders made in the extradition

proceedings, the only reason for extending his detention was that the investigation into the rape allegations was still incomplete. In other words, the Spanish extradition authorities, who had ordered the applicant's detention on the basis of a request for extradition - which was as such covered by Article 5 para. 1 (f) (art. 5-1-f) - decided to prolong his detention beyond 6 March 1992 - where provisional release had been granted in respect of the rape proceedings - for reasons ("reasonable suspicion of having committed an offence" and risk of absconding) that are more appropriately examined in the context of Article 5 para. 1 (c) (art. 5-1-c).

In these circumstances and in the exercise of its powers to consider the legal basis of the applicant's detention "autonomously", the Court will approach the period between 5 March 1990 and 21 March 1994 as falling within the ambit of Article 5 para. 1 (c) (art. 5-1-c). This is consonant with the aim and purpose of Article 5 (art. 5), which are to protect everyone from arbitrary deprivations of liberty (see, *mutatis mutandis*, the *Van der Leer v. the Netherlands* judgment of 21 February 1990, Series A no. 170-A, p. 13, para. 27).

B. The lawfulness of the applicant's continued detention

53. Mr Scott did not contest the lawfulness of his original detention either with regard to the rape investigation or the extradition proceedings. He contested, however, the legal basis of his continuing detention pending extradition after he had been granted conditional release in the rape case on 6 March 1992 (see paragraph 18 above).

The applicant further complained of the unlawfulness of the order for his continued detention dated 25 August 1993, made after the international letter rogatory had been complied with (see paragraph 25 above). In his submission, the evidence thus obtained did not strengthen significantly the prosecution case, making the detention order arbitrary under Article 5 para. 1 (c) (art. 5-1-c).

54. The Commission considered that the applicant's detention in connection with the criminal proceedings was ordered in accordance with a procedure prescribed by law and was lawful within the meaning of Article 5 para. 1 (c) (art. 5-1-c).

55. For the Government also the applicant's detention was decided according to law and by the competent judicial authority. As to the applicant's first complaint, the Government pointed out that in compliance with the appropriate legislation (see paragraph 41 above), the Spanish authorities were entitled to defer the execution of the extradition order as long as trial in the rape case remained pending.

56. The Court must therefore examine under this head whether the applicant's detention between 6 March 1992 (see paragraph 18 above) and 25 August 1993 (see paragraph 25 above) as well as the order for his

continued detention made on that last date were "in accordance with a procedure prescribed by law" and "lawful" within the meaning of Article 5 para. 1 (art. 5-1). The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof; but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5 (art. 5), namely to protect individuals from arbitrariness (see, as a recent authority, the *Amuur v. France* judgment of 25 June 1996, Reports of Judgments and Decisions 1996-III, p. 857, para. 50).

57. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 para. 1 (art. 5-1) failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see the *Bouamar v. Belgium* judgment of 29 February 1988, Series A no. 129, p. 21, para. 49).

1. The applicant's detention between 6 March 1992 and 25 August 1993

58. Mr Scott complained that at least between 6 March 1992 and 25 August 1993 he was technically kept in detention pending extradition while, in reality, the justification for his detention was the ongoing investigation into the rape allegations. Once he was released on bail on the rape charge, there was no substantive justification for his continued detention under either sub-paragraphs (c) or (f) of Article 5 para. 1 (art. 5-1-c, art. 5-1-f). He should therefore either have been released or extradited immediately.

59. The Court observes in limine that, although the applicant's complaint concerning the alleged unlawfulness of his detention pending extradition was not specifically mentioned in the Commission's decision on admissibility (see paragraph 45 above), it is apparent from the facts of the case as established by the Commission but also from the Commission's reasoning in both its decision on admissibility and its report (see paragraphs 43 and 44 of the report) that this question forms part of the scope of the case now before the Court. In any event, the Court has jurisdiction to examine it of its own motion (see, *mutatis mutandis*, the *Kamasinski v. Austria* judgment of 19 December 1989, Series A no. 168, p. 30, para. 59).

60. As stated above (see paragraph 52), the Court agrees with the applicant that during the referred period the material justification for his continued detention was his alleged involvement in the rape case. The Court is satisfied that, in deciding the applicant's continued detention on that basis, the central judicial authorities - central investigating judge no. 4 and Audiencia Nacional - followed a procedure that was in conformity with domestic legislation. It has not been contended by the applicant that the legislation in question - essentially the relevant provisions of the Extradition

Act 1985 and the Extradition Treaty between the United Kingdom and the Kingdom of Spain and also the provisions concerning detention pending trial contained in the Code of Criminal Procedure - is in itself contrary to the Convention. The national authorities were entitled under that legislation to defer the surrender of a person requested for extradition if a criminal investigation was in progress (see paragraph 41 above). Under section 10 (3) of the Extradition Act (see paragraph 40 above) they were further entitled to keep the applicant in detention by applying the same principles as those applicable to pre-trial detainees.

61. Issues of lawfulness which may otherwise have arisen from the protracted length of the applicant's detention pending extradition (see the *Kolompar v. Belgium* judgment of 24 September 1992, Series A no. 235-C, p. 56, para. 40, and the *Quinn v. France* judgment of 22 March 1995, Series A no. 311, pp. 19-20, para. 48), are in this case indistinguishable from those which the Court will address under Article 5 para. 3 (art. 5-3) and do not therefore call for a separate examination.

62. Against this background, it cannot be said that the applicant's detention during the period concerned was unlawful for the purposes of Article 5 para. 1 (art. 5-1).

2. The detention order of 25 August 1993

63. The conformity with domestic legislation of the procedure followed by the judicial authorities in charge of the rape case, in particular the Puerto de la Cruz investigating judge, has not been disputed. The Court, for its part, does not discern, either in the wording of the applicable legislation or in its application, any contradiction with the Convention. It concludes that in this case the applicant's deprivation of liberty on allegations of rape was "in accordance with a procedure prescribed by law".

64. It remains to be examined whether the new detention order in connection with the rape charges on 25 August 1993 also conformed with the substantive rules of domestic law and was "lawful" within the meaning of Article 5 para. 1 (c) of the Convention (art. 5-1-c).

65. The Court notes that Mr Scott was first arrested following a complaint by Ms T. that the applicant had threatened and beaten her, forcing her to undress and to have sexual intercourse with him; it further notes that when located by the police, the applicant had attempted to flee (see paragraphs 7 and 8 above). Moreover, on 29 April 1993 further evidence was received, including a fresh statement by the complainant and medical certificates to the effect that upon her return from Tenerife Ms T. had undergone prolonged psychiatric treatment (see paragraph 25 above). In view of the foregoing and having particular regard to the applicant's criminal record (see paragraph 8 above), which the national authorities were entitled to consider by virtue of Article 503 para. 2 of the Code of Criminal Procedure (see paragraph 35 above), the Court is satisfied that the new order

for the applicant's detention on 25 August 1993 was made in compliance with the substantive domestic legislation applicable and was not arbitrary for the purposes of Article 5 para. 1 (c) (art. 5-1-c).

3. Conclusion

66. The Court concludes that, in the present case, there has been no violation of Article 5 para. 1 of the Convention (art. 5-1).

II. ALLEGED VIOLATION OF ARTICLE 5 PARA. 3 OF THE CONVENTION (Art. 5-3)

67. The applicant further complained that the unreasonable length of his detention was in breach of Article 5 para. 3 of the Convention (art. 5-3), which reads 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. The Government's preliminary objection

68. The Government pleaded the applicant's failure to exhaust the domestic remedies available to him. They argued that not a single application for release had been addressed to the authorities with responsibility over the rape case, that is Puerto de la Cruz investigating judge no. 1 and the Audiencia Provincial of Santa Cruz de Tenerife.

69. The applicant submitted, *inter alia*, that, even if the judge in Tenerife had granted bail on the criminal charges, he would have remained subject to detention under the extradition proceedings.

70. The Court notes that the applicant made at least three applications for provisional release (see paragraphs 20, 21 and 22 above) and that, in the last occasion recorded in the file, the matter was brought all the way to the Constitutional Court. Admittedly, these applications were addressed to the Audiencia Nacional, which only had authority to decide on matters concerning the request for extradition. However, having regard to the reference to the rape proceedings made by Mr Scott in at least one of his applications for release (see paragraph 21 above), and, above all, to the autonomous approach to the applicant's detention adopted by the Court (see paragraph 52 above), the Court considers that the applicant did exhaust the domestic remedies available to him. The central judicial authorities, which chose to make the resolution of the rape proceedings a prerequisite for executing the applicant's extradition, kept the applicant in detention under their direct orders from 23 March 1990 to 16 March 1994 (see paragraphs 10 and 28 above). In these circumstances, it was reasonable to consider that

they had the last say in matters relating to his detention, no further purpose being served by applying to the Tenerife authorities.

The Government's preliminary objection falls therefore to be dismissed.

B. Merits of the complaint

71. The applicant complained of the protracted length of his pre-trial detention, which, in his submission, lasted from 5 March 1990, the day of his arrest, to 27 March 1994, when he was finally handed over to the United Kingdom authorities.

72. The Commission, while finding that Article 5 para. 3 (art. 5-1) only applied to the applicant's detention in connection with the rape case, considered that the fact that the applicant was deprived of his liberty during a very long consecutive period imposed on the Spanish authorities a special duty of diligence to bring his detention to an end without further delay.

73. In the Government's submission, the applicant's pre-trial detention only covered two periods of his overall detention; namely, one going from 5 March 1990 to 6 March 1992 and another one from 25 August 1993 to 21 March 1994, a total of roughly two years and seven months. Only during these periods was the applicant detained under orders made in the rape case and, therefore, only these periods strictly fell within the exception in Article 5 para. 1 (c) (art. 5-1-c) and can thus be taken into consideration for the purposes of Article 5 para. 3 (art. 5-3).

1. General principles

74. As established in the Court's case-law, whether a period of pre-trial detention can be considered "reasonable" must be assessed in each case according to its special features (see, among other authorities, the *Wemhoff v. Germany* judgment of 27 June 1968, Series A no. 7, p. 24, para. 10).

Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty. It falls in the first place to the national judicial authorities to examine all the circumstances arguing for or against the existence of such a requirement and to 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 facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 para. 3 (art. 5-3).

The persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the lawfulness 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. The complexity and special characteristics of the investigation are factors to be considered in this respect (see, among many other authorities, the *Letellier v. France* judgment of 26 June 1991, Series A no. 207, p. 18, para. 35, and the *Van der Tang v. Spain* judgment of 13 July 1995, Series A no. 321, pp. 17-18, para. 55).

2. Period to be taken into consideration

75. For the reasons set out above (see paragraphs 51 and 52 above), the Court is satisfied that the ongoing investigation into the rape case provided the ultimate justification for the applicant's protracted period of detention. Not only did the authorities dealing with extradition matters - central investigating judge no. 4 and the Criminal Division of the Audiencia Nacional - constantly make reference to the rape file in extending the applicant's detention pending extradition, they even requested the investigating judge in Puerto de la Cruz to supply information as to whether the applicant could be extradited (see paragraph 22 above). In so doing, the Spanish courts acted within powers granted to them by the legislation in force to defer the extradition of a person under investigation until his criminal liabilities in Spain had been discharged (see paragraph 41 above).

The Court will therefore consider under the present head the applicant's detention from the day of his arrest to the day when the Audiencia Provincial of Santa Cruz de Tenerife acquitted him of the rape charges; a total of four years and sixteen days. The few remaining days up to the applicant's delivery to the United Kingdom authorities on 27 March 1994 were completely unrelated to the rape proceedings and fall therefore outside the scope of Article 5 para. 3 (art. 5-3).

3. Grounds for continued detention

76. The applicant accepted that initially the suspicion of an offence of rape could justify his detention. He concentrated the main thrust of his arguments on the alleged lack of special diligence on the part of the Spanish authorities.

77. For the Government, the national authorities, in prolonging the applicant's detention, relied on the seriousness of the offence allegedly committed by him (rape) as well as on the risk of his absconding. In support of the latter ground, they pointed to the fact that the applicant had already escaped from a British prison; that he had forged a passport; and had attempted to flee when located by the police (see paragraph 8 above).

78. The Court accepts that the alleged offences were of a serious nature. The fact that the public prosecutor requested that the applicant be sentenced to a period of sixteen years' imprisonment (see paragraph 26 above)

supports this conclusion. However, the existence of a strong suspicion of the involvement of a person in serious offences, while constituting a relevant factor, cannot alone justify a long period of pre-trial detention (see the *Tomasi v. France* judgment of 27 August 1992, Series A no. 241-A, p. 35, para. 89).

79. As to the danger of Mr Scott's absconding, the Court notes that this ground was expressly mentioned in only one of the decisions rejecting Mr Scott's applications for release (see paragraph 20 above). While it would certainly have been desirable for the Spanish courts to have given more detailed reasoning as to the relevance of that ground in the particular circumstances of the case, the Court is nonetheless satisfied that an evident and significant risk of the applicant's absconding persisted throughout his entire period of detention. This has, furthermore, not been contested by the applicant.

4. Conduct of the proceedings

80. According to the applicant, his case was a straightforward one, requiring only that two witnesses be heard and certain medical evidence be obtained. It should have been tried within months, not years.

81. The Commission was also of the view that the case against the applicant did not appear to have been of great complexity. It found that it had not been established that his detention was in conformity with the "reasonable time" requirement in Article 5 para. 3 of the Convention (art. 5-3).

82. The Government referred to the complexities associated with the implementation of the international letter rogatory (see paragraph 11 above) as justifying the delay in bringing the applicant to trial. In that context, they pointed out that the alleged victim's inability to make a statement in a Finnish court due to her mental state further delayed the proceedings by nearly one year.

83. The Court cannot subscribe to the Government's contention that the various difficulties associated with the implementation of the international letter of judicial cooperation (translation of documents, transmission by diplomatic channels, repeated summons of the complainant) can justify the very long period of time the applicant spent in detention. Like the Commission, the Court considers that the case was not particularly complex. Indeed, it is apparent from the case file before it that, after the investigation had been terminated, the evidence against the applicant only included two statements by the complainant, two statements by the accused and four medical certificates. Furthermore, there is nothing to suggest that the length of the proceedings can be attributable in whole or in part to the applicant's conduct. In these circumstances the Court cannot but conclude that the duty of "special diligence" enshrined in Article 5 para. 3 (art. 5-3) has not been observed.

5. Conclusion

84. In conclusion, there has been a violation of Article 5 para. 3 of the Convention (art. 5-3).

III. APPLICATION OF ARTICLE 50 OF THE CONVENTION (Art. 50)

85. Article 50 of the Convention (art. 50) provides as follows:

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

The applicant's claims under this provision (art. 50) were for compensation for damage and reimbursement of legal costs and expenses referable to the proceedings before the Convention institutions.

A. Damage

86. The applicant sought compensation at a rate of £30,000 per annum for what he considered had been an unnecessary and unjustified period of detention. He left it to the Court's discretion to decide whether the appropriate period was the whole four years spent in detention or only after March 1992, that is when provisional release in the rape case was ordered.

87. The Court notes that the applicant, following his extradition to the United Kingdom in March 1994, stood trial for the murder of his father. He was found guilty and was sentenced to life imprisonment (see paragraph 31 above). The trial judge recommended a minimum period of imprisonment of twelve years (*ibid.*). The Court further notes that the applicant's extradition was granted on condition that the time spent in prison pending extradition be deducted from the sentence that would eventually be passed on him by the English courts in the murder case (see paragraph 13 above). No evidence has been adduced before the Court to suggest that the United Kingdom authorities will not honour that condition.

In these circumstances, the Court considers that the finding of a violation constitutes sufficient just satisfaction for the purposes of Article 50 (art. 50) as to any damage sustained.

B. Costs and expenses

88. For the legal costs and expenses in bringing his case before the Convention institutions, the applicant claimed the sum of £31,497.50 inclusive of value-added tax.

89. The Government found the sum claimed excessive.

90. In the light of the criteria emerging from its case-law, the Court holds that the applicant should be awarded the amount of £18,000 less 20,700 French francs already paid by way of legal aid in respect of fees and travel and subsistence expenses.

C. Default interest

91. In the circumstances of the present case, the Court considers it appropriate to apply the statutory rate in force in the United Kingdom on the date of adoption of the present judgment, namely 8% per annum.

FOR THESE REASONS, THE COURT

1. Holds by eight votes to one that there has been no violation of Article 5 para. 1 of the Convention (art. 5-1);
2. Dismisses unanimously the Government's preliminary objection concerning the non-exhaustion of domestic remedies as regards the complaint under Article 5 para. 3 of the Convention (art. 5-3);
3. Holds unanimously that there has been a violation of Article 5 para. 3 of the Convention (art. 5-3);
4. Holds unanimously that the finding of a violation constitutes adequate satisfaction for any damage suffered by the applicant;
5. Holds unanimously:
 - (a) that the respondent State is to pay to the applicant, within three months, in respect of costs and expenses, £18,000 (eighteen thousand pounds sterling) less 20,700 (twenty thousand, seven hundred) French francs to be converted into pounds sterling at the rate applicable on the date of delivery of the present judgment;
 - (b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;
6. Dismisses unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 18 December 1996.

ROLV RYSSDAL
President

HERBERT PETZOLD
Registrar

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

R.R.
H.P.

PARTLY DISSENTING OPINION OF JUDGE REPIK

(Translation)

I voted with the majority to reject the preliminary objection that domestic remedies were not exhausted and to find a violation of Article 5 para. 3 of the Convention (art. 5-3), but on the latter point for reasons which were different in part. On the other hand, I disagree with the majority's finding that there was no violation of Article 5 para. 1 of the Convention (art. 5-1).

The reasons for my partly separate and partly dissenting opinion are as follows.

I. General observations

According to the majority of the Court, the whole period of the applicant's detention fell within the ambit of Article 5 para. 1 (c) of the Convention (art. 5-1-c), and accordingly also within that of Article 5 para. 3 (art. 5-3) (see paragraphs 52 and 74 of the judgment), with the exception of the short period from 21 to 27 March 1994, which had no connection at all with the Spanish proceedings on the rape charges (see paragraph 75 of the judgment).

The Court based this amalgamation of the two separate grounds for the applicant's detention on its power to consider the legal basis of detention "autonomously" (see paragraph 52 of the judgment) having regard to the fact that "the investigation into the rape charges provided at all times, in whole or in part, justification for the applicant's ongoing detention" and that "even during the period going from 6 March 1992 to 25 August 1993, where technically the applicant was being detained exclusively on the strength of orders made in the extradition proceedings, the only reason for extending his detention was that the investigation into the rape allegations was still incomplete" (see paragraph 52 of the judgment).

I regret that I am unable to follow the Court in this approach; to find that detention with a view to extradition under the Spanish legal rules governing detention fell within the ambit of Article 5 para. 1 (c) of the Convention (art. 5-1-c) seems to me to be unfounded. It is the statutory conditions for detention, both substantive and procedural, as laid down by domestic legislation, that should be taken into account in order to decide what was lawful under the Convention, not the reasons given by the domestic courts in their decisions to justify extending detention with a view to extradition. The Court's task is precisely to determine whether the latter reasons suggest that detention with a view to extradition pursued an aim other than that for which it was prescribed by law (see the *Quinn v. France* judgment of 22 March 1995, Series A no. 311, p. 19, para. 47).

The applicant's detention during the period under consideration was based - in part concurrently and in part consecutively - on two different

legal grounds and two different types of court order, between which the Convention also draws a clear distinction. Detention on remand (Article 503 of the Spanish Code of Criminal Procedure) - apart from the other specific substantive conditions relating thereto - may be ordered only in the context of domestic criminal proceedings. On the other hand, detention with a view to extradition may be ordered only in the context of extradition proceedings. These requirements are also laid down by Article 5 para. 1 (c) of the Convention (art. 5-1-c), as regards the former, and Article 5 para. 1 (f) (art. 5-1-f) as regards the latter. In addition, different domestic courts have jurisdiction to determine all questions concerning these two different grounds of detention. The fact that the two sets of proceedings were being conducted concurrently does not make it right for the Court to treat these two grounds of detention as identical for the purposes of the Convention and does not dispense it from examining them separately, which does not mean that when assessing the length of detention it cannot take into account the total period of imprisonment (see, for example, *mutatis mutandis*, the *Yagci and Sargin v. Turkey* judgment of 8 June 1995, Series A no. 319-A, p. 18, para. 49).

The majority's approach leads to the following unacceptable consequence: if the whole period of detention from 5 March 1990 to 21 March 1994 was based solely on what was needed in connection with the domestic proceedings on the rape charge and thus fell within the ambit of Article 5 para. 1 (c) of the Convention (art. 5-1-c), how is it possible to justify the fact that this detention exceeded the maximum statutory limit under Spanish law, namely four years (Article 504 of the Spanish Code of Criminal Procedure)? From 6 March 1994 onwards the applicant's detention should be considered unlawful.

It is therefore necessary to consider the two grounds of detention separately.

II. Detention on remand

I agree with the majority that this detention was lawful and that, throughout its length, there were plausible reasons to suspect that the applicant had committed a serious offence and that there was an obvious risk of his absconding (see paragraphs 78 and 79 of the judgment).

Taking a different approach from the majority, I consider that the period of detention which fell within the ambit of Article 5 para. 3 (art. 5-3) ran only from 5 March 1990 to 6 March 1992 and from 25 August 1993 to 21 March 1994, that is to say a total of two years and nearly seven months. However, although the period in question was considerably shorter than the period considered by the majority, their conclusions on the question whether the detention exceeded a reasonable time remain valid, even for this shorter period. There were very lengthy periods of inactivity on the part of the Puerto de la Cruz investigating judge not only during the applicant's

detention on remand but also during the period when he was technically no longer being held on remand (6 March 1992 - 25 August 1993), and the delays during this last period directly influenced the fact that his detention continued after 25 August 1993.

III. Detention with a view to extradition

For detention falling within the ambit of two (or more) sub-paragraphs of Article 5 para. 1 (art. 5-1) to be justified, it is sufficient for it to be justified under only one of the provisions concerned. Having regard to the above conclusions concerning detention on remand ordered in connection with the domestic proceedings on the rape charge, the only period which has still to be considered under Article 5 para. 1 (f) (art. 5-1-f) is that part of the applicant's detention ordered solely with a view to extradition, that is the period from 6 March 1992 to 25 August 1993, since the period from 21 to 27 March 1994 was manifestly justified by the need to order and implement measures to hand the applicant over to the British authorities.

According to the majority, by holding the applicant in detention with a view to extradition for the sole reason that the domestic criminal proceedings on the rape charge were still pending, the Spanish judicial authorities acted within the limits of the powers conferred on them under domestic law to defer extradition (see paragraph 75 of the judgment). I consider that there is a stage missing from that reasoning. Under the relevant provision of the Extradition Act (section 19 (2)) and the similar provision of Article 18 of the Extradition Treaty between Spain and the United Kingdom (see paragraph 41 of the judgment), delivery of the person whose extradition is sought into the charge of the requesting State may be deferred until he has discharged his criminal responsibilities if criminal proceedings against him are pending in the State from which extradition is sought. But these provisions say nothing to the effect that the person whose extradition is sought must be detained with a view to extradition or held at the disposal of the requested State in some other manner, in particular in detention on remand in connection with the domestic criminal proceedings¹.

¹ It is logical that if the person concerned is detained only for the purposes of the domestic criminal proceedings, the means that must be employed to that end are those which are available to the State in such proceedings. If means which have no place in such proceedings are used, and if the prisoner is not detained under the responsibility of the court conducting the proceedings, there is nothing to encourage that court to proceed with the necessary diligence, notwithstanding the fact that the prisoner is deprived of the safeguards laid down by the legislation of most countries in respect of detention on remand, but not of detention with a view to extradition (for example, statutory maximum limits of detention, obligation to consider *proprio motu*, at various intervals, whether the reasons for detention are still valid, deduction of detention on remand from the sentence imposed in the domestic criminal proceedings, etc.).

Consequently, these provisions cannot constitute the legal basis for detention with a view to extradition, which is based on other provisions.

For more than seventeen months the applicant was detained only with a view to extradition. However, the extradition proceedings ended for all practical purposes with the Cabinet's decision of 28 May 1991. All that remained to be done was to enforce extradition, which took only a few days (21-27 March 1994). The Audiencia Nacional's decision of 17 March 1992 to extend detention with a view to extradition came after the Puerto de la Cruz investigating judge decided, rightly or wrongly, that the applicant should be released from detention on remand (see paragraphs 18 and 19 of the judgment). There can be no doubt that detention with a view to extradition was used for the purposes of the domestic criminal proceedings on the rape charge.

Article 5 para. 1 (f) of the Convention (art. 5-1-f) provides for a review of the lawfulness of the detention of a person against whom action with a view to his extradition "is being taken". The wording in both French and English means that only where extradition proceedings are in progress is deprivation of liberty justified under that provision (art. 5-1-f). It follows that if the proceedings are not being conducted by the authorities with the necessary diligence, or if continued detention results from the pursuit of aims other than those for which it was prescribed by law, the detention ceases to be justified under Article 5 para. 1 (f) (art. 5-1-f) (see the above-mentioned Quinn judgment, p. 19, paras. 47 and 48; see also application no. 7317/75, decision of 6 October 1976 in the *Lynas v. Switzerland* case, Decisions and Reports 6, pp. 141 et seq.). Whatever approach one chooses - either the excessive length of detention not justified by extradition proceedings in progress or the use of detention with a view to extradition for the purposes of the domestic criminal proceedings - the detention in question was not justified under Article 5 para. 1 (f) of the Convention (art. 5-1-f) and there has accordingly also been a violation of Article 5 para. 1 (art. 5-1).