

In the case of Muller v. France (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 A (2), as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr F. Gölcüklü,
Mr F. Matscher,
Mr L.-E. Pettiti,
Mr N. Valticos,
Mr R. Pekkanen,
Sir John Freeland,
Mr B. Repik,
Mr E. Levits,

and also of Mr H. Petzold, Registrar, and Mr P.J. Mahoney, Deputy Registrar,

Having deliberated in private on 30 November 1996 and 18 February 1997,

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

Notes by the Registrar

1. The case is numbered 13/1996/632/816. 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.

PROCEDURE

1. The case was referred to the Court by the French Government ("the Government") on 31 January 1996, 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. 21802/93) against the French Republic lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) by a French national, Mr Patrick Muller, on 8 March 1993.

The Government's application 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 application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 5 para. 3 of the Convention (art. 5-3).

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). On 19 September 1996 the President granted him legal aid (Rule 4 of the Addendum to Rules of Court A).

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. 4 (b)). On 8 February 1996, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr F. Matscher, Mr N. Valticos, Mr R. Pekkanen, Sir John Freeland, Mr B. Repik and Mr E. Levits (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 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 22 July 1996 and the Government's memorial on 30 July. On 6 September 1996 the Secretary to the Commission indicated that the Delegate did not wish to reply in writing.

On 31 October 1996 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 November 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr J.-F. Dobelle, Deputy Director of Legal Affairs, Ministry of Foreign Affairs,	Agent,
Mrs M. Dubrocard, magistrat, on secondment to the Legal Affairs Department, Ministry of Foreign Affairs,	
Mrs N. Berthélémy-Dupuy, magistrat, on secondment to the Human Rights Office, European and International Affairs Department, Ministry of Justice,	
Mr F. Fèvre, magistrat, on secondment to the Department of Criminal Affairs and Pardons, Ministry of Justice,	Advisers;

(b) for the Commission

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

Mr G.-M. Ney, of the Saverne Bar,	Counsel.
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The Court heard addresses by Mr Soyer, Mr Ney and Mr Dobelle.

AS TO THE FACTS

I. Circumstances of the case

6. Between July and November 1988 several armed bank robberies were committed in eastern France. Five concurrent judicial investigations were begun, in Colmar on 25 August, Montbéliard on 23 September, Mulhouse on 28 October and Colmar again on 31 October.

On 13 December 1988 the Mulhouse Regional Crime Squad arrested the applicant and his brother and took them into police custody. They immediately admitted the offences of armed robbery, attempted armed robbery, theft and criminal conspiracy of which they were accused. On 15 December the Colmar investigating judge charged them and ordered their detention pending trial. He charged five other

persons with criminal conspiracy, aiding and abetting armed robbery or attempted armed robbery, handling stolen goods or the proceeds of armed robbery and unlawful possession of a firearm and ordered that one of them be detained.

Mr Muller was held in pre-trial detention for the entire duration of the judicial investigation (see paragraphs 21-28 below).

A. The criminal proceedings

1. The judicial investigation proceedings

(a) Instructions to the police

7. Surveillance by means of shadowing and telephone tapping had already been ordered before the arrests were made in judicial investigations begun in proceedings against a person or persons unknown. Further instructions were issued on 14 February 1989 to the gendarmerie in Antibes, Barr and Saverne, on 15 December 1989 to the gendarmerie in Montbéliard, on 28 September 1990 to the Strasbourg CID and on 28 November 1990 to the gendarmerie in Saverne, Strasbourg, Mulhouse and Wintzenheim.

(b) Amalgamation of proceedings and replacement of investigating judges

8. The proceedings were amalgamated by the joinder on 15 December 1988 of the two investigations begun in Colmar and by the transfer of the cases for which the Montbéliard and Mulhouse investigating judges were responsible from them to their colleague in Colmar on 2 February 1989 and 28 December 1989 respectively. On three occasions thereafter (11 April 1989, 1 February and 18 April 1990) the judge investigating the case was replaced.

(c) The charges

9. In March 1989 the investigating judge brought three further charges against suspects already being proceeded against, including the applicant. On 10 October 1990 he charged a further person with aiding and abetting robbery and ordered his detention pending trial for one year, which order was renewed on expiry of the warrant. He arranged with that person a confrontation of the co-accused, which Mr Muller refused to attend. As a result, a further confrontation was arranged for 11 June 1991 between the applicant and four co-accused. Three other persons were charged on 27 November 1990, 5 February 1991 and 10 July 1991. The charge brought on 5 February had been requested by the public prosecutor on 30 October 1990.

(d) Questioning and other investigative measures

10. In 1989 the investigating judge questioned Mr Muller on 2 and 13 February, 30 June, 27 October and 8 and 29 November. He examined his brother, who had also been charged as a principal, on 27 January, 24 and 27 October and 8 and 30 November and some of the co-accused on 5 June and 26 October. The psychiatric, medical and social inquiry reports on the applicant and his brother that were ordered on 14 February 1989 were filed on 15 March. On 3 March 1989 the investigating judge had received the documents requested on 13 February 1989 from the judge responsible for the execution of sentences in Strasbourg. Fearing that the applicant might escape, he had him transferred on 28 April from Colmar Prison to Strasbourg Prison. On 11 July he ordered that a co-accused who had been in custody since 15 December 1988 should be released subject to court supervision on terms which he subsequently varied.

11. In 1990 he questioned the principals together on 1 March and 2 July and some of the co-accused on 12 March and 18 October.

Psychiatric reports ordered on 28 September 1990 on two of the main co-accused were filed on 3 November. On 4 January 1991 the judge received a report requested on 28 November 1990 on a person charged on 27 November 1990. On 14 June 1991 he ordered a psychiatric report on the accused whose detention pending trial he had ordered on 10 October 1990. He received it on 30 June 1991 at the same time as information on that accused's personality which he had requested from the Lure investigating judge on 4 April 1991.

(e) Closure of the judicial investigation

12. On 8 August 1991 the investigating judge sent the investigation file to the public prosecutor, who on 24 September 1991 applied for orders for severance, a partial committal to the Criminal Court, a partial discharge and transfer of the remainder of the case to the Principal Public Prosecutor.

13. On 7 November 1991 the judge ordered that the case be sent to the Principal Public Prosecutor in respect of the offences classified as serious crimes (crimes) - armed robbery, attempted armed robbery, aiding and abetting armed robbery and handling the proceeds of an armed robbery - and the connected other major offences (délits) of theft, conspiracy and unlawful possession of firearms and ammunition. In particular, he considered that there was sufficient evidence against the applicant to commit him for trial on four counts of armed robbery, three counts of attempted armed robbery, one count of conspiracy to commit one or more serious crimes and various counts of theft of vehicles. He made a partial discharge order in respect of three co-accused.

14. On 12 December 1991 the Indictment Division of the Colmar Court of Appeal committed seven people, including Mr Muller, to stand trial at the Haut-Rhin Assize Court. It ordered their arrest and detention in the prison near the Assize Court. With respect to the length of time that the applicant had spent in pre-trial detention, it held as follows:

"With regard to the reasonable time laid down in Article 5 para. 3 of the Convention (art. 5-3), failure to comply with which could be sanctioned only by the release of the accused, which he has not applied for, Mr Patrick Muller, who has been in custody since 15 December 1988, stands accused of a number of armed robberies committed within the jurisdiction of three different tribunaux de grande instance and is currently the main subject of a single judicial investigation, which was made complicated by transfers and joinders and covered twelve principal accused, co-principals and accomplices, all members of one and the same criminal conspiracy.

Although the investigations were not perhaps conducted with quite as much diligence as was desirable, we are satisfied from the summary of the investigative measures in the investigating judge's order of 9 August 1991 dismissing the accused's only application for release, that the length of his detention has not, to date, exceeded the authorised limit."

Having considered the information on the applicant's personality, it also noted: "His conduct in detention, like his brother's, has been deplorable owing to the influence he has exerted on the other inmates by a policy of systematic protest."

15. In judgments dated 14 April 1992 the Court of Cassation dismissed as being out of time the appeals on points of law brought by Mr Muller, his brother and a co-defendant on 17 January 1992 against the order committing them for trial at the Assize Court.

2. The trial proceedings

16. Owing to the suspensive effect of these appeals to the Court of Cassation, the case could not be tried by the Assize Court until the appeals on points of law had been heard.

17. In August and September 1992 the experts, other witnesses and the civil parties were summoned to appear at the trial set down for 21 September 1992 at the Haut-Rhin Assize Court, whose president examined the defendants on 7 September 1992.

18. On 18 September 1992 the defence lawyers applied for an adjournment of the trial on the ground that they had not been able to communicate with their clients since 12 September because of a prison warders' strike. On 21 September the Assize Court granted their applications and the trial was adjourned to the December session. Fresh summonses to appear were served in November and the trial took place on 7, 8 and 9 December 1992.

19. On 9 December 1992 the Haut-Rhin Assize Court convicted the applicant and his brother and sentenced them to ten years' imprisonment for armed robbery, attempted armed robbery, theft and conspiracy; four other accused, on whom it passed a two-year suspended sentence; and a fifth accused, who was given a three-year suspended sentence. Mr Muller was released on 13 July 1996, the entire period he had spent in pre-trial detention having been deducted from his sentence.

B. Proceedings relating to pre-trial detention

20. While the applicant was in custody pending trial, a number of disciplinary penalties were imposed on him: a 25-franc fine in November 1989 for producing an identity document from which the photograph had been removed (he had given it to his wife during a prison visit), a suspended sentence of four days' confinement to his cell in April 1990 for refusing to allow himself to be searched when leaving the prison visiting room and two days' solitary confinement in July 1990 for "jeopardising public order or prison discipline".

On 24 October 1989 the governor of Strasbourg Prison had reported to the investigating judge on the behaviour of the applicant and his brother in prison.

1. The first extension of pre-trial detention (12 December 1989)

21. After holding an adversarial hearing on the issue of detention in the presence of the accused as required by law, the Colmar investigating judge made an order on 12 December 1989 detaining Mr Muller for a further period of one year from 15 December 1989 on the following grounds:

"The offences with which the accused is charged - three armed robberies and one attempt to commit armed robbery, carried out within a period of three months - are particularly serious. He did not hesitate to use his weapon and tied up a bank manager while threatening him with it. In addition, he has six previous convictions. He must therefore remain in custody while the investigation continues in order to avoid his reoffending or attempting to escape punishment."

2. The second extension of pre-trial detention (4 December 1990)

22. On 4 December 1990 the investigating judge ordered an extension of pre-trial detention for a further period of one year from 15 December 1990 on the following grounds:

"The accused admits that he has committed several robberies;

he has previous convictions for similar offences; and investigations are continuing in order to establish the role of each of the co-accused. In view of the sentence he faces, the accused, Patrick Muller, is unlikely to appear for trial."

3. The first application for release
(6 August 1991)

23. On 6 August 1991 the applicant made an application for his immediate release on the following grounds:

"(a) at no stage of the investigation has my behaviour obstructed the ordinary course of justice;

(b) I admitted the offences even before I appeared before the judge responsible for investigating my case;

(c) the investigation of this case by successive judges is being protracted entirely because they persist in trying to establish the guilt of persons unconnected with the offences with which I am charged;

(d) I have been in custody for thirty-three months;

(e) had I been tried within a 'reasonable' time, I would have received the following reductions of sentence:

(i) nine months for the bicentenary of the
1789 Revolution;

(ii) nine months granted by the President on the occasion
of Bastille Day;

(iii) three times three months' ordinary remission;

(f) had I been granted these reductions, I would have served
a term of five years;

(g) it is by no means certain that the sentence which the
Haut-Rhin Assize Court will pass will exceed the period I have
already spent in pre-trial detention."

The prosecution opposed his release for the following reasons:

"The accused is implicated in several armed robberies and he has previous convictions for similar offences, so is an habitual offender. He is unlikely to appear for trial in view of the sentence he faces."

24. In an order of 9 August 1991 the Colmar investigating judge refused the application in the following terms:

"In order to determine whether [the length of the pre-trial detention ordered on 15 December 1988 exceeded the 'reasonable time' referred to in Article 5 para. 3 (art. 5-3)], regard must be had to the complexity of the proceedings and to the accused's conduct during the investigation.

It must be observed that Patrick Muller is charged with six armed robberies and attempted armed robberies committed with his brother ... Although both accused have admitted the offences, they have consistently sought to exculpate their accomplices and their associates charged with criminal conspiracy. That has meant that numerous investigations, interviews and confrontations have been necessary in order to establish the precise role of each of the twelve accused in the proceedings, which have been particularly

complex owing to the number of offences with which the accused were charged.

Furthermore, Patrick Muller refused to be taken from prison to attend the confrontation on 29 October 1990, which consequently had to be reorganised for 11 June 1991 with the accused present. In addition, it was necessary to issue a warrant on 30 October 1990 for the arrest of L., who was not arrested until 5 February 1991. Moreover, it is to be noted that Patrick Muller has at no stage applied for release. Lastly, the chronology of the main investigative measures [which he set out] indicates that there were no interruptions in the investigation.

...

Patrick Muller's application for release must be refused. Mr Muller must be kept in custody, firstly, in order to ensure that he appears for trial as, in view of the sentence he faces, there is a risk of his absconding and, secondly, to prevent him reoffending, since he has previous convictions for similar offences."

25. On 29 August 1991 the Indictment Division of the Colmar Court of Appeal upheld the refusal to release the applicant, as follows:

"The defendant admitted, on his first appearances before the investigating judges in charge of the cases concerning him, that he had taken part in three armed robberies and two attempted armed robberies committed between 1 July and 28 October 1988 in different banks in the Colmar area.

He also admitted stealing a number of cars used in the hold-ups and being in possession of weapons used during them.

In the proceedings concerned he is one of twelve accused whose actions have given rise to an investigation.

The various steps taken during the investigation are summarised in the order appealed against, to which reference is made on this point.

It is to be noted not only that the proceedings were complicated by joinders and transfers of jurisdiction but also that, in order to clarify the exact role and the degree of involvement of the various co-accused in the offences with which Patrick Muller is charged, it was indisputably necessary to keep him in custody, given the risk of his putting pressure on those persons or influencing what they said in their statements.

The last confrontation took place in the investigating judge's office on 11 June 1991 and it was necessary beforehand to determine - a complex process - the exact role played by the various accused.

The investigating judge sent the case to the public prosecutor on 8 August 1991 with a view to making a disposal order.

Patrick Muller, whose detention was justified until the role of all the accused involved in the hold-ups and the surrounding events had been established, is consequently precluded from claiming that the length of his pre-trial detention is unreasonable and from using that as a ground for applying for release.

Given the need to ensure that Patrick Muller, who in view of the sentence he faces is likely to abscond, appears for trial, and given the risk of his reoffending (which is all the greater as he has previous convictions for similar offences), the investigating judge was right in the circumstances to dismiss the application."

26. On 18 December 1991 the Criminal Division of the Court of Cassation dismissed the applicant's appeal on points of law against that decision. It gave the following reasons in its judgment:

"It is noted in the judgment appealed against that Patrick Muller was involved in a series of three armed robberies and two attempted armed robberies committed between 1 July and 28 October 1988 in various banks in the Colmar area. Twelve other persons have also been charged in connection with the same matters.

Muller appeared before the court below and was assisted by his counsel. With respect to his submission, repeated in the ground of appeal, that there had been a violation of Article 5 para. 3 (art. 5-3) of the European Convention, the court found that the proceedings had been complicated by joinders and transfers of jurisdiction and by the need to clarify the exact role and the degree of involvement of various co-accused in the offences with which Patrick Muller was charged. It added that the last confrontation had taken place on 11 June 1991 and that the investigating judge had sent the case to the public prosecutor on 8 August 1991 with a view to making a disposal order; for those reasons, it held that the accused, Muller, was precluded from claiming that the length of his detention had been unreasonable.

In those circumstances the Indictment Division justified its decision in law in respect of the provisions referred to in the ground of appeal, which, calling into question as it does the unfettered discretion of the courts of trial and appeal in assessing the length of detention, cannot be allowed."

4. The second application for release
(18 September 1992)

27. On 18 September 1992 the applicant made his last application to the Assize Court for release and at the same time applied for the trial to be adjourned (see paragraph 18 above). He submitted that there was every reason for him to appear for trial as he had a family and could stay with his mother, and he complained of a failure to comply with the "reasonable time" requirement of Articles 5 and 6 of the Convention (art. 5, art. 6).

28. The Assize Court refused his application on 21 September 1992. On 23 March 1993 the Court of Cassation dismissed the applicant's appeal on points of law against that decision in these terms:

"It appears from the procedural documents that by a decision of the Indictment Division of the Colmar Court of Appeal of 12 December 1991 which has become final, Patrick Muller was committed to stand trial at the Haut-Rhin Assize Court on the indictment [see paragraph 14 above]. The case was set down for hearing on 21 September 1992. On that date the accused's counsel sought an adjournment as he had been unable to communicate with his client and also applied for the accused's release.

In order to answer the submission that there had been a violation of Article 5 para. 3 of the Convention (art. 5-3) on the ground that pre-trial detention had exceeded a reasonable

time, the court below stated: 'In the instant case, in view of its complexity and the number of offences with which the accused is charged, this "reasonable time" has not been exceeded'.

The Court of Cassation has no jurisdiction to review that assessment of fact."

II. Relevant domestic law

29. The relevant provisions of the Code of Criminal Procedure on pre-trial detention are the following:

Article 144

"In cases involving serious crimes [matière criminelle] and other major offences [matière correctionnelle], where the possible sentence is equal to or exceeds one year's imprisonment in the case of an offence discovered during or immediately after its commission [délit flagrant], or two years' imprisonment in other cases, and if the constraints of court supervision are inadequate in regard to the functions set out in Article 137, detention pending trial may be ordered or continued:

(1) where detention of the accused pending trial is the sole means of preserving evidence or material clues or of preventing either pressure being brought to bear on witnesses or victims, or collusion between accused and accomplices;

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

Detention pending trial may also be ordered, in the circumstances set out in Article 141-2, where the accused deliberately fails to comply with the obligations imposed by court supervision."

Article 145

"In cases involving major offences [matière correctionnelle] an order for detention of the accused pending trial may be made at any stage of the investigation and must set out the legal and factual reasons for the decision with reference to the provisions of Article 144; the accused shall be informed orally of the order and be given a full copy of it, receipt being acknowledged by signature in the case file.

The provisions of the preceding paragraph shall [also] apply to cases involving serious crimes [matière criminelle].

Whatever the classification of the offence, an investigating judge who is considering detaining an accused pending trial shall inform him that he has a right to the assistance of counsel of his own choosing or assigned officially. He shall also inform him of his right to have adequate time for the preparation of his defence.

The chosen member of the Bar or, where an application has been made for counsel to be assigned officially, the chairman of the Bar shall be promptly informed of the detention by any available means; mention of this formality shall be made in the record of the judicial investigation. The lawyer shall be

entitled to inspect the case file immediately and to communicate freely with the accused.

The investigating judge shall give his decision in chambers, after an adversarial hearing at which he shall hear the submissions of the public prosecutor, then the observations of the accused and, if appropriate, of his counsel.

However, the investigating judge may not order the immediate detention of the accused if he or his lawyer requests time for the preparation of his defence.

In that case the investigating judge may, in an order that is reasoned with reference to the provisions of the preceding paragraph and against which no appeal shall lie, direct that the accused be taken into custody for a fixed period, which may in no case exceed five days. Within that period he shall again have the accused brought before him and (whether or not the accused is assisted by counsel) shall proceed as prescribed in the fourth and fifth paragraphs. If he does not order detention of the accused pending trial, the accused shall be released.

Any period spent in temporary custody shall, where appropriate, count as part of the period of detention pending trial for the purposes of Article 145-1. Temporary custody shall be treated as detention pending trial within the meaning of Article 149 of this Code and Article 24 of the Criminal Code."

Article 145-2

"In cases involving serious crimes [matière criminelle] an accused cannot be held in detention for more than one year. However, the investigating judge may, at the end of that period, decide to prolong detention for a period not exceeding one year in an order made in accordance with the provisions of the fifth paragraph of Article 145 and renewable in the same way. The order must set out, with reference to the provisions of sub-paragraphs (1) and (2) of Article 144, the legal and factual reasons for the decision.

The provisions of this Article shall apply until the disposal order is made."

Article 147

"Whatever the classification of the offence, the accused may be released, subject or not to court supervision, by means of an order made by the investigating judge of his own motion after the public prosecutor has submitted his observations, provided that the accused undertakes to attend for procedural purposes whenever required to do so during the investigation and to keep the investigating judge informed of all his movements.

The public prosecutor may also apply at any time for the accused to be released. The investigating judge shall rule within five days of such an application."

Article 148

"Whatever the classification of the offence, the accused or his lawyer may at any time lodge with the investigating judge an application for release, subject to his giving the undertakings referred to in the preceding Article. The investigating judge shall communicate the file immediately to the public prosecutor for his submissions. He shall at the same time, by whatever

means, inform any civil party, who may submit observations. The registrar shall record in the investigation file when and by what means the information prescribed in this paragraph was given.

The investigating judge shall take a decision, in an order giving specific grounds as laid down in the first and second paragraphs of Article 145, not later than five days following communication of the file to the public prosecutor. However, where a decision has still to be taken on a previous application for release or on an appeal against an earlier order refusing release, the five-day period will only start to run on the date of the decision of the investigating judge or Indictment Division.

Where release is granted, it may be made subject to court supervision.

Where there is a civil party to the proceedings, the investigating judge's order can only be made forty-eight hours after notice has been given to that party.

If the investigating judge fails to give a decision within the period laid down in the third paragraph, the accused may apply directly to the Indictment Division, which after receiving the Principal Public Prosecutor's reasoned submissions in writing, shall decide within twenty days of the application to it, failing which the accused shall be released unless an order has been made for particulars of his application to be verified. The public prosecutor is likewise entitled to apply to the Indictment Division in the same eventuality."

Article 148-2

"Any judicial authority which has to rule, pursuant to Articles 141-1 and 148-1, on an application for a judicial supervision order to be discharged in whole or in part or for release shall give its decision after hearing the prosecution and the accused or his counsel; an accused who is not in detention and his counsel shall be given notice by registered letter at least forty-eight hours before the date of the hearing.

The judicial authority to which the application has been made, depending on whether it is an authority of first or second instance, shall give its decision within ten or twenty days of receipt of the application. However, where on the date of receipt of the application a decision has still to be taken on a previous application for release or on an appeal against an earlier decision to refuse release, the ten- or twenty-day period shall only start to run on the date of the decision of the relevant judicial authority; if no decision has been given by the end of that period, the judicial supervision or detention pending trial shall be terminated and the accused, unless detained for another reason, shall be released.

The investigating judge's decision shall be enforceable immediately notwithstanding any appeal; where the accused remains in detention, the Indictment Division shall give its decision within twenty days of the appeal, failing which the accused, unless detained for another reason, shall be released."

Article 148-4

"When four months have elapsed since his last appearance before the investigating judge or a judge delegated by the

investigating judge, an accused who is in custody or his counsel may, provided no disposal order has been made, apply for release directly to the Indictment Division, which shall decide as laid down in the last paragraph of Article 148."

PROCEEDINGS BEFORE THE COMMISSION

30. Mr Muller applied to the Commission on 8 March 1993. He complained of the length of his detention pending trial (Article 5 para. 3) (art. 5-3) and the criminal proceedings which had been brought against him (Article 6 para. 1) (art. 6-1) and of an infringement of his right to a fair trial.

31. On 22 February 1995 the Commission (Second Chamber) declared the application (no. 21802/93) admissible solely with respect to the complaint relating to the length of the detention pending trial and declared the remainder inadmissible. In its report of 6 September 1995 (Article 31) (art. 31) it expressed the unanimous opinion that there had been a violation of Article 5 para. 3 of the Convention (art. 5-3). The full text of the Commission's opinion is reproduced as an annex to this judgment (1).

Note by the Registrar

1. For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1997-II), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

32. In their memorial the Government asked the Court to "dismiss Mr Muller's application, alleging a violation of Article 5 para. 3 of the Convention (art. 5-3), as being manifestly ill-founded".

AS TO THE LAW

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

33. Mr Muller submitted that the length of his detention pending trial had infringed Article 5 para. 3 of the Convention (art. 5-3), which provides:

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

The Government disputed that contention whereas the Commission accepted it.

A. Period to be taken into consideration

34. The period to be taken into consideration started on 13 December 1988, when the applicant was taken into police custody, and ended on 9 December 1992, when the Assize Court delivered its judgment (see paragraph 19 above). It therefore lasted almost four years.

B. Reasonableness of the length of the detention

35. In order to assess whether continued detention is justified, 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 undisputed 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 (see, as the most recent authority, the *Van der Tang v. Spain* judgment of 13 July 1995, Series A no. 321, pp. 17-18, para. 55).

1. Justification for the detention

36. The relevant authorities considered whether detention should continue on four occasions - twice of their own motion, on 12 December 1989 and 4 December 1990, and twice on an application by the applicant, on 6 August 1991 and 18 September 1992 (see paragraphs 21-28 above). As justification for deciding to continue detention pending trial, they relied on both the seriousness of the offences and the risk that the applicant would abscond or reoffend. To justify refusing Mr Muller's applications for release, they relied simultaneously on the complexity of the case, the needs of the investigation and the risk that the applicant would collude with his co-accused, abscond or reoffend.

(a) The complexity of the case

37. In the Government's submission, the case had been complex owing to the seriousness of the offences and the number of people involved. It had appeared necessary to detain Mr Muller until trial as he had sought to clear his accomplices throughout the investigation, and the last arrests had taken place on 5 February and 10 July 1991, that is to say two years after the judicial investigation had begun.

38. The Court accepts that the investigation of the case was complex in that it had been necessary to amalgamate the proceedings, which had originally been conducted in three different jurisdictions simultaneously (see paragraphs 6 and 8 above). It notes, however, that as soon as he was arrested, Mr Muller had admitted the offences of which he was accused.

(b) The risk of collusion

39. In the Commission's opinion, the applicant's confessions when questioned and the fact that many other people had been charged in the first few days of the investigation had reduced the risk of collusion between the applicant and his co-accused.

40. The Court notes that the judge closed the criminal investigation on 7 November 1991 and that on 12 December the Indictment Division committed Mr Muller and his accomplices to stand trial at the Haut-Rhin Assize Court (see paragraphs 13-14 above). The risk of collusion between the persons involved must therefore have disappeared by then (see, among other authorities, the *Kemmache v. France* judgment of 27 November 1991, Series A no. 218, p. 26, para. 54).

(c) Risk of the applicant's absconding and reoffending

41. The Government submitted that there had been no guarantee that

Mr Muller would appear for trial and that his release would have entailed a risk of his absconding and reoffending.

42. In the Commission's opinion, the risk that he would abscond had not been adequately established and the danger of his reoffending was not, by itself, sufficient.

43. Like the Commission, the Court notes that it is not apparent from the decisions not to release the applicant that there was a real risk of his absconding. Although such a danger may exist where the sentence faced is a long term of imprisonment, the Court points out that the risk of absconding cannot be gauged solely on the basis of the severity of the sentence faced (see, among other authorities, the *Tomasi v. France* judgment of 27 August 1992, Series A no. 241-A, p. 37, para. 98, and the *W. v. Switzerland* judgment of 26 January 1993, Series A no. 254-A, p. 16, para. 33).

44. As far as the danger of reoffending is concerned, a reference to a person's antecedents cannot suffice to justify refusing release (see, in particular, the *Clooth v. Belgium* judgment of 12 December 1991, Series A no. 225, p. 15, para. 40).

(d) Summary

45. In sum, by 7 November 1991 at the latest - when the order closing the investigation with a view to a committal to the Assize Court was made (see paragraph 13 above) - the detention in issue had ceased to be based on relevant and sufficient reasons. It is therefore necessary to consider the conduct of the proceedings.

2. Conduct of the proceedings

46. Mr Muller submitted that he should not have had to suffer the consequences of the judicial authorities' decision to prosecute in a single set of proceedings all the persons implicated in the crimes he was alleged to have committed, especially as he had immediately admitted the offences of which he had been accused - even before being brought before the investigating judge - and had made only two applications for release, which could not have impeded the smooth progress of the proceedings.

47. The Government noted that instructions were still having to be issued to the police at the end of 1990 and considered that the replacement of successive judges had not hindered the normal progress of the proceedings. The applicant had himself delayed the investigation by refusing to attend a confrontation on 29 October 1990 and subsequently applying for the trial to be adjourned.

48. The Court observes that it was not until 18 September 1992 that the trial was adjourned on account of the prison warders' strike and that only a few weeks' delay had resulted (see paragraph 18 above). Furthermore, it notes that the proceedings in issue included the removal of two investigating judges from the case and the subsequent replacement of the investigating judge on three occasions (see paragraph 8 above). Whilst the joinder of the various sets of proceedings was certainly necessary for the proper administration of justice, the successive changes of judge - the first a year after the investigation had begun, the other two after it had been under way for two years - contributed to slowing down the investigation; that fact was moreover recognised by the domestic courts (see paragraph 25 above). The judicial authorities did not act with all due expedition, although the applicant had admitted the offences once and for all as soon as the investigation had begun (see paragraph 6 above) and did not thereafter make any application that might have slowed its progress. The period spent by Mr Muller in detention pending trial therefore exceeded the "reasonable time" laid down in Article 5 para. 3 (art. 5-3).

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

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

50. Article 50 of the Convention (art. 50) provides:

"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

51. Mr Muller claimed compensation of 100,000 French francs (FRF) for non-pecuniary and pecuniary damage. Because of his detention pending trial he had been unable to benefit from any clemency measure or to work or to attend any vocational training courses.

52. In the Government's submission, the applicant had not provided any prima facie evidence of pecuniary damage and a finding of a violation would provide sufficient compensation for any non-pecuniary damage.

53. The Delegate of the Commission expressed no opinion.

54. The Court dismisses the claim relating to pecuniary damage as it notes that in any event the length of the detention pending trial was deducted from his sentence. With regard to non-pecuniary damage, it considers that the present judgment constitutes sufficient compensation.

B. Costs and expenses

55. Mr Muller sought reimbursement of his costs and expenses, namely FRF 60,300, incurred in the proceedings before the French courts and the Convention institutions.

56. The Government argued that no vouchers had been produced in support of the claim.

57. The Delegate of the Commission expressed no view.

58. On the basis of the information in its possession and its case-law, the Court awards the applicant FRF 40,000 for costs and expenses, principally those incurred in Strasbourg.

C. Default interest

59. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 3.87% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 5 para. 3 of the Convention (art. 5-3);
2. Holds that the present judgment in itself constitutes sufficient just satisfaction in respect of the non-pecuniary damage sustained by the applicant;

3. Holds that the respondent State is to pay the applicant, within three months, 40,000 (forty thousand) French francs for costs and expenses, on which sum simple interest at an annual rate of 3.87% shall be payable from the expiry of the above-mentioned three months until settlement;
4. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 17 March 1997.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar