



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

**CASE OF REINHARDT AND SLIMANE-KAÏD v. FRANCE**

**(21/1997/805/1008 and 22/1997/806/1009)**

JUDGMENT

STRASBOURG

31 March 1998

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SUMMARY<sup>1</sup>

Judgment delivered by a Grand Chamber

*France – length of criminal proceedings and their fairness before Criminal Division of Court of Cassation*

I. SCOPE OF THE CASE

Determined by Commission’s decision on admissibility.

II. ARTICLE 6 OF THE CONVENTION

**A. Length of proceedings**

*1. Period to be taken into consideration*

In criminal proceedings “reasonable time” began to run as soon as a person was “charged” within meaning of Article 6 § 1 – recapitulation of Court’s case-law.

In first applicant’s case: eight years, one month and just over a week.

In second applicant’s case: eight years, five months and almost two weeks.

*2. Reasonableness of length of proceedings*

Recapitulation of Court’s case-law.

Length of proceedings largely a result of investigation not having been carried out expeditiously.

*Conclusion:* violation (unanimously).

**B. Whether proceedings in Court of Cassation were fair**

Court examined whether, taken as a whole, proceedings before Criminal Division of Court of Cassation were “fair”.

Reporting judge’s report and draft judgment communicated before hearing to advocate-general, but not to applicants – applicants’ lawyers had possibility at any hearing to listen to first part of report dealing with facts, procedure and grounds of appeal, but part of report containing reporting judge’s opinion was confidential – at best, only possible to learn recommendation set out in report – imbalance was not reconcilable with requirements of fair trial.

Fact that advocate-general’s submissions had not been communicated to applicants likewise questionable.

*Conclusion:* violation (nineteen votes to two).

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1. This summary by the registry does not bind the Court.

III. ARTICLE 50 OF THE CONVENTION

**A. Damage**

Pecuniary damage: no causal link established – claims dismissed (unanimously).

Non-pecuniary damage: finding of a violation constituted sufficient just satisfaction (twenty votes to one).

**B. Costs and expenses**

Applicants had neither quantified nor detailed their claims – claims dismissed (unanimously).

COURT'S CASE-LAW REFERRED TO

15.7.1982, *Eckle v. Germany*; 27.11.1991, *Kemmache v. France* (nos. 1 and 2); 25.6.1997, *Van Orshoven v. Belgium*

**In the case of Reinhardt and Slimane-Kaïd v. France<sup>1</sup>,**

The European Court of Human Rights, sitting, in accordance with Rule 51 of Rules of Court A<sup>2</sup>, as a Grand Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,  
 Mr THÓR VILHJÁLMSOON,  
 Mr F. GÖLCÜKLÜ,  
 Mr F. MATSCHER,  
 Mr L.-E. PETTITI,  
 Mr B. WALSH,  
 Mr C. RUSSO,  
 Mr J. DE MEYER,  
 Mr I. FOIGHEL,  
 Mr R. PEKKANEN,  
 Mr J.M. MORENILLA,  
 Sir John FREELAND,  
 Mr A.B. BAKA,  
 Mr L. WILDHABER,  
 Mr G. MIFSUD BONNICI,  
 Mr J. MAKARCZYK,  
 Mr D. GOTCHEV,  
 Mr B. REPIK,  
 Mr U. LÖHMUS,  
 Mr M. VOICU,  
 Mr V. BUTKEVYCH,

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

Having deliberated in private on 27 November 1997 and 26 February 1998,

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

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*Notes by the Registrar*

1. There were originally two separate cases numbered 21/1997/805/1008 and 22/1997/806/1009. In each case, 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 of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

## PROCEDURE

1. The two cases were referred to the Court by the European Commission of Human Rights (“the Commission”) and by the French Government (“the Government”) on 27 January and 14 March 1997 respectively, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). It originated in two applications (nos. 23043/93 and 22921/93) against France lodged with the Commission under Article 25 by two French nationals, Mr Mohamed Slimane-Kaïd and Mrs Françoise Reinhardt, on 7 and 11 September 1993 respectively. Mrs Reinhardt, who was originally designated by the initials F. U.-R., subsequently consented to the disclosure of her identity.

The Commission’s request referred to Articles 44 and 48 and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46); the Government’s application referred to Article 48. The object of the request and 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 6 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, both applicants stated that they wished to take part in the proceedings and designated the same lawyer (Rule 30).

3. On 21 February 1997 the President of the Court decided, in the interests of the proper administration of justice, that a single Chamber should be constituted to consider both cases (Rule 21 § 7).

4. The Chamber to be constituted included *ex officio* Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 21 February 1997, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr F. Matscher, Mr B. Walsh, Mr I. Foighel, Mr J.M. Morenilla, Mr J. Makarczyk and Mr D. Gotchev (Article 43 *in fine* of the Convention and Rule 21 § 5).

5. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Government, the applicants’ lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicants’ memorials on 24 July 1997 and the Government’s memorials on 25 July 1997. On 14 August 1997 the Secretary to the Commission informed the Registrar that the Delegate did not wish to reply in writing.

6. On 25 April 1997 the Chamber decided to relinquish jurisdiction in favour of a Grand Chamber (Rule 51). The Grand Chamber to be constituted included *ex officio* Mr Ryssdal, the President of the Court, and Mr Bernhardt, the Vice-President, together with the other members and the four substitutes of the original Chamber, the latter being Mr M. Voicu, Sir John Freeland, Mr L. Wildhaber and Mr F. Gölcüklü (Rule 51 § 2 (a) and (b)). On 28 April 1997, in the presence of the Registrar, the President drew by lot the names of the seven additional judges needed to complete the Grand Chamber, namely Mr C. Russo, Mr J. De Meyer, Mr R. Pekkanen, Mr A.B. Baka, Mr G. Mifsud Bonnici, Mr B. Repik and Mr U. Lõhmus (Rule 51 § 2(c)). Subsequently, as Mr Ryssdal was unable to take part in the further consideration of the case, his place as President of the Grand Chamber was taken by Mr Bernhardt (Rules 21 § 6 and 51 § 6), and Mr V. Butkevych replaced him as a member.

7. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 November 1997. The Court had held a preparatory meeting beforehand at which it decided to join the cases (Rule 37 § 4).

There appeared before the Court:

(a) *for the Government*

Mr M. PERRIN DE BRICHAMBAUT, Director of Legal Affairs,  
Ministry of Foreign Affairs, *Agent*,  
Mr J.-P. DINTILHAC, advocate-general  
at the Court of Cassation,  
Mrs M. DUBROCARD, *magistrat*, on secondment  
to the Legal Affairs Department,  
Ministry of Foreign Affairs,  
Mr G. BITTI, member of the Human Rights Office,  
European and International Affairs Department,  
Ministry of Justice, *Advisers*;

(b) *for the Commission*

Mr J.-C. SOYER, *Delegate*;

(c) *for the applicants*

Mr F. TISSOT, of the Versailles Bar, *Counsel*.

The Court heard addresses by Mr Soyer, Mr Tissot and Mr Perrin de Brichambaut and also the replies of Mr Tissot, Mr Perrin de Brichambaut and Mr Dintilhac to questions put by three members of the Court.

## AS TO THE FACTS

### I. CIRCUMSTANCES OF THE CASE

8. Mr Slimane-Kaïd was formerly the chairman of two public limited companies Provex S.A. (“Provex”) and Servec S.A. (“Servec”), respectively engaged, in particular, in buying equipment for export and in industrial coachbuilding.

On 26 January 1982 he had also formed with Mrs Reinhardt a private company called Urka S.A.R.L (“Urka”), whose registered office was at the latter’s home address and main activity the hire and sale of equipment of all types both in France and overseas. On 1 July 1982 Mr Slimane-Kaïd had replaced Mrs Reinhardt as manager of that company.

#### A. Background to the case

9. Under two commercial agreements the Iveco company was to sell industrial vehicles to Provex and deliver “cab chassis” on bailment, with Iveco being named as bailee, to coachbuilders designated by either Provex or Servec. It was stipulated that at the end of the bailment and on receipt of payment, Iveco would deliver to Provex and Servec the vehicle test certificates (*feuilles des mines*) of the vehicles concerned and the certificates of sale.

10. The description of the facts set out in this and the next paragraph is based on the documents from the domestic proceedings produced to the Court.

On 28 April 1984 two hundred and eighty-seven vehicles belonging to Iveco were delivered on bailment to Servec’s premises. The periods of bailment were due to end on 5 June, 5 July, 5 August and 5 September 1984; on those dates Provex and Servec were to take up the purchase option on the vehicles and to obtain delivery of the test certificates for each vehicle and the certificates of sale specific to Iveco.

At Iveco's request, a bailiff inspected Servec's premises and drew up an official report on 11 May 1984. A court-appointed expert carried out an inspection on 25 July 1984 and an interim attachment was made on 28 August 1984. It was found on the first of those three dates that 155 vehicles were missing, on the second that 198 were missing and on the third that 211 were missing. Iveco obtained restitution of only 43 vehicles; the others had been registered and sold.

11. On 27 July 1984 an Iveco representative reported certain of these matters to the Versailles Regional Criminal Investigation Department ("RCID"). Inquiries were made by Detective Inspector Renaud. In a report of 24 September 1984 he said that the test certificates and certificates of sale of 116 Iveco vehicles that had been filed by Provex for registration purposes with the prefecture were forgeries; he went on to say that offences may have been committed under the companies acts and insolvency legislation in connection with Servec /Provex and to conclude that a judicial investigation was necessary.

## **B. The judicial investigation**

### *1. The first judicial investigation*

#### **(a) Preferment of charges against Mr Slimane-Kaïd of misappropriation and procuring the issue of administrative documents by means of false information, certificates or statements**

12. On 25 September 1984 the Chartres public prosecutor made a written application for an investigation to be opened into offences by an unnamed person of misappropriation and procuring the issue of administrative documents by means of false information, certificates or statements. Mr Candau, the investigating judge, who was assigned to the case that day, sent instructions on 27 September 1984 to the head of the Versailles RCID to "... continue the investigation with a view to identifying the persons who committed the offences, their co-principals and accomplices...".

13. On 2 October 1984 Mr Slimane-Kaïd was taken into police custody and questioned. On 4 October 1984 the Versailles RCID's report was received, Mr Slimane-Kaïd was charged with misappropriation and procuring the issue of administrative documents by means of false information, certificates or statements, and remanded in custody (until 8 January 1985, when the investigating judge ordered his release under judicial supervision). On the same day the investigating judge sent instructions to the Versailles RCID to pursue the investigation.

**(b) Preferment of charges against Mr Slimane-Kaïd of forgery of private, commercial or banking documents**

14. On 2 October 1984 the Chartres public prosecutor made a written application for an additional investigation to be opened into offences of forgery of private, commercial or banking documents by Mr Slimane-Kaïd, who was suspected of having falsified the relevant test certificates and certificates of sale.

15. On 12 October 1984 Iveco – which had joined the proceedings as a civil party claiming damages on 9 October – made oral submissions and a director of Provex was heard as a witness. On the same day and on 15 October 1984 Mr Slimane-Kaïd’s lawyer wrote to the investigating judge enclosing documents for the file. Iveco’s lawyer did likewise on the latter date.

16. Mr Slimane-Kaïd was questioned on 15 and 16 October 1984 and an Iveco executive was heard on 17 October. On 22 October a confrontation was held between Mr Slimane-Kaïd and an Iveco executive and on 9 November 1984 Mr Slimane-Kaïd was questioned again and charged with forgery of private, commercial or banking documents.

17. On 10 November 1984 Mr Slimane-Kaïd’s lawyer wrote to the investigating judge enclosing documents for the file. Iveco’s lawyer did likewise on 13 December 1984.

**(c) Preferment of charges against Mr Slimane-Kaïd of misappropriating company assets, offences equivalent to negligent or fraudulent bankruptcy, false accounting and fraud**

18. Since the investigators suspected Mr Slimane-Kaïd of further offences, a second preliminary inquiry was started on 3 October 1984 into his activities at Provex, Servec and Urka.

19. Between 9 October 1984 and 27 March 1985 the Versailles RCID carried out a number of searches and seizures at Mr Slimane-Kaïd’s home address and on the premises of Provex; but they also carried out searches and seizures on 16 October 1984 at Mrs Reinhardt’s home (the registered office of Urka) – while she was in custody – and on 18 October 1984 in a house rented by Urka. On 14 November 1984 Mrs Reinhardt was questioned by a police investigator.

20. On 2 November 1984 the investigating judge had made an order transmitting the file to the public prosecutor for submissions (*ordonnance de soit-communié*). On 11 December 1984 the Chartres public prosecutor made an application for additional charges to be preferred against Mr Slimane-Kaïd for misappropriating company assets, offences equivalent to negligent bankruptcy (for failure to declare within the statutory time-limit that the company was unable to meet its liabilities), fraudulent bankruptcy (for misappropriation of part of the company's assets), false accounting and fraud. On 14 December 1984 Mr Slimane-Kaïd was charged with those offences.

**(d) Preferment of charges against Mr G. of forgery of private, commercial or banking documents**

21. On 19 December 1984 the investigating judge sent instructions to the head of the Versailles RCID to pursue the investigation into all the offences with which Mr Slimane-Kaïd had been charged.

22. Mr Slimane-Kaïd was questioned on 3 and 7 January 1985.

23. The Versailles RCID sent the investigating judge its report on 1 February 1985 after carrying out the instructions. On the same day, Mr G., who had been held in custody since 30 January, was charged with forgery of private, commercial or banking documents and released under judicial supervision. He was suspected of issuing false invoices to Provex and Servec and supplying Mr Slimane-Kaïd with the means for committing a like offence.

24. On 1 February 1985 the investigating judge sent instructions to the Versailles RCID to pursue the investigation into the offences with which Mr Slimane-Kaïd and Mr G. had been charged. The Versailles RCID sent in its report on 7 February.

**(e) Preferment of charges against Mrs Reinhardt of aiding and abetting the misappropriation of company assets and of handling misappropriated company assets**

25. Mrs Reinhardt was arrested on 6 February 1985; the next day, following an application by the Chartres public prosecutor for a further investigation to be opened, she was charged with aiding and abetting the misappropriation of company assets and of handling misappropriated company assets. She was suspected of having given Mr Slimane-Kaïd four blank cheques between July and December 1983 drawn on Urka's bank account for a total of 1,735,000 French francs – which she had signed and which Mr Slimane-Kaïd was to make out and endorse – and of having benefited from monies fraudulently obtained from that company.

**(f) The remainder of the investigation**

26. On 7 February 1985 the investigating judge sent instructions to the Versailles RCID to pursue the investigation into the offences with which Mr Slimane-Kaïd, Mr G. and Mrs Reinhardt had been charged.

27. On 25 March 1985 Mr Slimane-Kaïd's lawyer sent a letter to the investigating judge enclosing documents for the file.

28. On 31 May 1985 the Versailles RCID sent in its report pursuant to the investigating judge's instructions of 7 February 1985.

29. Mr Slimane-Kaïd and Mr G. were questioned on 4 and 5 December 1985 respectively and Mrs Reinhardt – who had been summoned to appear before the investigating judge on 4 December 1985, but had not done so – on 11 February 1986.

30. On 25 March 1986 the investigating judge made an order transmitting the file to the public prosecutor for submissions.

31. On 16 July 1986 Mr Slimane-Kaïd wrote to the investigating judge enclosing documents for the file.

32. In a further application of 21 July 1986 the Chartres public prosecutor requested the investigating judge to pursue the investigation into the offences with which Mr Slimane-Kaïd, Mr G. and Mrs Reinhardt had been charged and to interview Mr Slimane-Kaïd, Mr G. and the managing director of the VPL company.

*2. The second judicial investigation*

33. On 25 September 1986, following a complaint lodged on 17 July 1986 by VPL (which joined the proceedings as a civil party claiming damages) against a person or persons unknown for misappropriation and forgery of commercial documents, the senior investigating judge at Chartres made an order transmitting the file to the public prosecutor for submissions.

34. On 29 September 1986 the Chartres public prosecutor applied for an investigation to be opened for misappropriation and forgery of commercial documents by a person or persons unknown. The investigation was to be conducted by Judge Candau.

*3. Pursuit of the two investigations in parallel and preferment of charges against Mr Slimane-Kaïd in the second investigation of misappropriation and forgery of commercial documents*

35. On 7 January 1987 both investigations were assigned to a different judge, Judge Halphen. He heard VPL's representative on 5 February 1987.

36. On 16 February and 18 March 1987 Mr Slimane-Kaïd and his lawyer wrote to the investigating judge enclosing documents for the file in connection with the first set of proceedings.

37. Mr Slimane-Kaïd was questioned on 11 June and 8 July 1987.

38. On 1 July VPL's lawyer had sent documents to the investigating judge requested by the latter in a letter of 9 June 1987.

39. Mr Slimane-Kaïd's lawyer wrote to the investigating judge on 10 September 1987 regarding the hearing of witnesses and inquiries in the first investigation. On 22 September 1987 Iveco's lawyer produced documents for the file.

40. Instructions were sent on 7 October 1987 to the Versailles RCID for inquiries to continue into the offences with which the three suspects had been charged.

41. On 28 October 1987 the investigating judge ordered that an expert's report be commissioned on the signatures at the foot of the certificates of sale. The expert filed his report on 31 December 1987. It was served on Iveco on 29 April 1988.

42. On 11 April 1988 Mr Slimane-Kaïd wrote to the investigating judge informing him that he had changed lawyers.

43. On 25 April 1988 the Versailles RCID's report pursuant to the instructions of 7 October 1987 was received.

44. On 5 May 1988 Mr Slimane-Kaïd wrote to the investigating judge informing him that he had changed lawyers.

45. On 25 May 1988 he was questioned and charged in connection with the second investigation with misappropriation and forging commercial documents.

46. On 16 June 1988 he wrote to the investigating judge informing him that he had changed lawyers.

47. On 29 June 1988 he again appeared before the investigating judge.

48. On 7 and 22 July and 26 September 1988 Mr Slimane-Kaïd or his lawyer wrote to the investigating judge in connection with additional inquiries and the production of documents for the file.

49. On 5 December 1988 a confrontation was held between Mr Slimane-Kaïd and the VPL representative.

50. On 26 and 29 December 1988, 12 and 30 January, 27 and 28 February and 6 and 7 March 1989, Mr Slimane-Kaïd or his lawyer wrote to the investigating judge in connection with additional inquiries and the production of documents for the file.

51. On 16 March 1989, in connection with the first investigation concerning Mr Slimane-Kaïd, the investigating judge instructed the Chartres police superintendent to "inspect the Iveco vehicle registration file for the first six months of 1969 and the first six months of 1970" and "to seize and place official seals on the originals of the test certificates".

52. On 20 March 1989 VPL's lawyer wrote to the investigating judge and produced documents for the file.

53. On 30 March 1989 the investigating judge heard an Iveco representative. Documents were produced for the file.

54. On 13 April 1989 the Versailles RCID's report on the instructions of 16 March 1989 was sent to the investigating judge.

55. On 5 June 1989 Mr Slimane-Kaïd's lawyer wrote to the investigating judge enclosing documents for the file relating to the first investigation; a lawyer acting for one of the civil parties did likewise on 16 June 1989.

56. On 26 June 1989 the investigating judge heard Mr Slimane-Kaïd, who both at that hearing and under cover of a letter of 7 July 1989 produced documents for the file.

57. On 25 July 1989 Mr Slimane-Kaïd requested an expert audit of Iveco's accounts. The request was renewed by his lawyer on 26 July, but turned down by the investigating judge on 28 July 1989. Mr Slimane-Kaïd appealed against that decision on 1 August 1989 but, following submissions on 19 September 1989 by the Principal Public Prosecutor at the Versailles Court of Appeal, the President of the Indictment Division of that court refused, in an order of 26 September 1989, to refer the request to the Indictment Division.

58. On 9 August 1989 Iveco's lawyer had written to the investigating judge and produced documents for the file. Mr Slimane-Kaïd's lawyer did likewise on 19 September 1989 in connection with the second investigation.

#### *4. Joinder of the proceedings and decision of the investigating judge*

59. By an order of the president of the Chartres *tribunal de grande instance* on 23 October 1989, Judge Halphen was replaced by Judge Defarge. On 3 November Judge Defarge ordered the transmission of the file to the public prosecutor for submissions with a view to joinder of the two sets of proceedings; the public prosecutor sought an order to that effect the same day. On 6 November 1989 the investigating judge made two orders: the first for joinder of the two sets of proceedings and the second for transmission of the file to the public prosecutor. On 28 November 1989 the public prosecutor made final submissions requesting the committal of Mr Slimane-Kaïd, Mr G. and Mrs Reinhardt to the criminal court. On 14 December 1989 Judge Defarge made a committal order.

## C. Judgment and appeals

### 1. *Proceedings in the Chartres Criminal Court*

60. The Chartres Criminal Court held a hearing on 11 June 1990.

On 25 June 1990 Mr Slimane-Kaïd's lawyer wrote to the president of that court enclosing documents for the file, as did Iveco's lawyer on 8 August 1990. Mr Slimane-Kaïd's lawyer forwarded further documents on 25 August.

On 12 September 1990 the criminal court decided to extend its deliberations until 14 November 1990.

On 22 and 25 October 1990 respectively Iveco and Mr Slimane-Kaïd's lawyers wrote to the president of that court enclosing documents for the file.

61. Judgment was delivered on 14 November 1990. Mr Slimane-Kaïd was found guilty of misappropriation, forging private, commercial or banking documents, fraud, false accounting and misappropriation of company assets and sentenced to five years' imprisonment, three of which were suspended; he was barred from carrying on any business activity for ten years. Mr G. was given a sentence of eighteen months' imprisonment for forging private, commercial or banking documents and aiding and abetting the forgery of commercial documents and Mrs Reinhardt a one-year suspended sentence for aiding and abetting the misappropriation of company assets. The court declared the civil party claims of Iveco and VPL inadmissible.

### 2. *Proceedings in the Versailles Court of Appeal*

62. Mr Slimane-Kaïd appealed to the Versailles Court of Appeal on 14 November 1990, as did the public prosecutor's office, Mrs Reinhardt, Mr G. and Iveco on 15, 16, 20 and 26 November 1990 respectively.

63. According to the Government, on 22 January and 8 February 1991 a summons was issued requiring a representative of VPL to appear, but the company could not be located. Mrs Reinhardt, Iveco, the liquidator of Servec (Mr Pierrat) and Mr Slimane-Kaïd were summonsed on 8, 15 and 19 February and 8 March 1991 respectively.

64. At the hearing on 21 March 1991 Mrs Reinhardt, Mr Slimane-Kaïd and Iveco lodged their submissions. The hearing was adjourned to 3 October 1991 to enable summonses to be served on Mr G. and VPL.

Summonses were issued against Mr G. on 16 April 1991 and, according to the Government, against VPL on 25 September 1991, but neither could be located.

65. On 3 October 1991 the hearing was adjourned for the last time to 6 February 1992 to enable summonses to be served on VPL and Mr Mariani, the liquidator acting in the joint liquidation of Provex, Provex S.A.R.L. and Urka.

Summonses were issued against VPL on 5 November 1991 and 8 January 1992.

66. On 2 April 1992 the Versailles Court of Appeal acquitted Mr Slimane-Kaïd on the count of misappropriation of company assets, upheld the guilty verdict on the other counts and confirmed the sentence. It increased Mrs Reinhardt's sentence to a term of eighteen months' imprisonment, suspended, and reduced Mr G.'s sentence to one year. It upheld the judgment of the trial court in all other respects.

### *3. Proceedings in the Court of Cassation*

67. Mrs Reinhardt and Mr G. lodged appeals on points of law with the Court of Cassation that same day. Mr Slimane-Kaïd and Iveco did likewise on 3 and 6 April. Mr G. also appealed.

The case file was sent to the Court of Cassation on 29 April 1992 and assigned to a reporting judge on 2 June 1992.

Iveco lodged written pleadings on 31 August 1992, followed by Mr G. and Mrs Reinhardt on 1 September 1992. On 12 October 1992 Iveco lodged one, and Mr Slimane-Kaïd two, written pleadings.

The reporting judge filed his report on 20 November 1992 and the advocate-general was appointed on 30 November.

Mr Slimane-Kaïd filed written pleadings on 18 February and 9 March 1993. VPL and Mr Mariani filed pleadings on 11 March 1993.

68. According to the Government, it is unlikely that the advocate-general prepared his submissions in writing as he intended to present them orally at the hearing.

The Government further maintained that at the hearing of the Court of Cassation on 15 March 1993, which took place without the applicant's representatives being present, the reporting judge addressed the court and oral submissions were made by the advocate-general.

69. In a decision delivered on 15 March 1993, the Court of Cassation, relying on the reporting judge's report, the parties' pleadings and the submissions of the advocate-general, dismissed the appeals of those who had been convicted.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Organisation of the Court of Cassation

70. The Court of Cassation is composed of the president, the divisional presidents, the judges, the auxiliary judges, Principal State Counsel, the Principal Advocate-General, the advocates-general, the senior registrar and the divisional registrars (Article L. 121-1 of the Judicature Code).

It is divided into five civil divisions and one criminal division, each comprising a divisional president, judges, auxiliary judges, one or more advocates-general and a divisional registrar (Articles L. 121-3, R. 121-3 and R. 121-4). The divisions are subdivided into sections, in which formation most appeals are heard.

### B. Principles governing the functioning of the Criminal Division of the Court of Cassation

#### 1. Appeals to the Court of Cassation

71. Judgments of an Indictment Division and judgments delivered by an assize court, a criminal court or a police court sitting as a court of last instance may, if they are not in accordance with the law, be set aside on an appeal on points of law by either the public prosecutor's office attached to the court which delivered the judgment or the party adversely affected (Article 567 of the Code of Criminal Procedure).

In criminal cases, Principal State Counsel at the Court of Cassation may appeal to that court only for the purposes of clarifying the law (*pourvoi dans l'intérêt de la loi*). In such cases, he appeals either on formal instructions from the Minister of Justice (Article 620) or of his own motion against a judgment delivered by an assize court, a criminal court or a police court sitting as a court of last instance where none of the parties has entered an appeal within the set time-limit (Article 621); in the event of an appeal by Principal State Counsel of his own motion, if the appeal is allowed the judgment is reversed but the parties may not rely on the Court of Cassation's ruling to contest execution of the judgment that has been set aside (*ibid.*).

## 2. *The reporting judge's report*

72. As soon as the case file is received by the registry of the Criminal Division of the Court of Cassation, the president of that division appoints a reporting judge (Article 587 of the Code of Criminal Procedure) from among the judges and the auxiliary judges; the latter have a vote at deliberations on appeals in which they are appointed as reporting judge (Article L. 131-7 of the Judicature Code).

73. The reporting judge draws up a written report in which he carries out a thorough review of the case, sets out the legal arguments deduced from the grounds of appeal, indicates what research he has carried out into legal opinion and case-law on the basis of the grounds of appeal and states his recommendations. He also prepares a draft judgment, which is distributed to each of his colleagues as a basis for discussion at deliberations.

The case file lodged by the reporting judge is sent by the registry, with the report and draft judgment, to the advocate-general assigned to the case by Principal State Counsel. Counsel for the parties are informed of the recommendation in the report (appeal to be declared inadmissible, or to be dismissed, allowed in part or in full) by an entry in the list of cases that is distributed a week before the hearing to lawyers practising in the *Conseil d'Etat* and Court of Cassation.

In principle, any additional pleading filed at this stage will be declared inadmissible (Article 590 of the Code of Criminal Procedure). However, the Court of Cassation has a discretion and it appears that examples of its declaring inadmissible pleadings filed late are rare (see Y. Monnet, Principal Advocate-General at the Court of Cassation, "*Pourvoi en cassation*", *Juris-classeur procédure pénale*, 1993, fascicule 40).

## 3. *The role of Principal State Counsel's Office at the Court of Cassation*

74. Principal State Counsel's Office at the Court of Cassation does not act as a prosecuting authority before that court. Except in appeals made for the purposes of clarifying the law, it acts only as a party joined to the criminal proceedings. Its role is not to argue the prosecution's case but to ensure that the law is correctly applied (see "*Pourvoi en cassation*", cited above, and P. Malibert, *Ministère Public*, *Juris-classeur procédure pénale*, 1994).

Mr Charbonnier, Advocate-General at the Court of Cassation, thus explains that whereas the role of the prosecution consists, in principle, of law enforcement and upholding the law, the role of Principal State Counsel's Office at the Court of Cassation is confined to the latter task. In that capacity it is required to ensure that the law is correctly applied when it is clear and correctly construed when ambiguous (L. Charbonnier,

“*Ministère Public et Cour suprême*”, *La semaine juridique, Doctrine* (1991), *Ed. G.* no. 43).

75. The duties of State Counsel in the Court of Cassation are “personally conferred on Principal State Counsel” (Article R. 132-1 of the Judicature Code). Save for directions to lodge an appeal for the purposes of clarification of the law, Principal State Counsel does not receive any instructions regarding the performance of his duties (see for example the speech made on 6 January 1995 by Mr Jéol, Principal Advocate-General at the Court of Cassation, at the formal ceremony marking the beginning of the judicial year, *La documentation française*, Paris 1995, and the “*Ministère Public et Cour suprême*” article cited above).

Principal State Counsel “assigns the Principal Advocate-General and the advocates-general to the divisions in which he considers they may most usefully serve” (Article R. 132-2). The Principal Advocate-General and the advocates-general “speak on behalf of Principal State Counsel in the divisions to which they have been appointed” (Article L. 132-3). In important cases their submissions are communicated to Principal State Counsel, who, if he is not in agreement and the advocate-general refuses to amend them, may delegate another advocate-general or make submissions himself at the hearing (Article R. 132-3). It appears, however, that that provision has never been applied and that in practice the advocates-general are, therefore, free to decide on the tenor of their submissions (see the “*Pourvoi en cassation*” article cited above).

In his speech of 6 January 1995 (referred to above) Mr Jéol explained: “[the] value of the work [of the advocate-general], which is performed after the reporting judge has completed his task, is as a ‘second opinion’. Either the advocate-general agrees with the report, in which eventuality the decision to be taken will be clearer, or he disagrees, and will have triggered the necessary debate. In all cases his role is somewhat ‘maieutic’.”

76. The advocate-general’s submissions do not have to be in writing.

#### 4. *The hearing*

77. The list of hearings is fixed weekly. A single advocate-general deals with all cases on the list for the week he is on duty. He informs the relevant lawyers practising in the *Conseil d’Etat* and Court of Cassation, who, if they wish to make oral submissions, must advise the president before the hearing.

78. A few days before the hearing a preparatory “meeting” is held between the president and the senior judge of the division and the advocate-general on duty for that week; they systematically review the cases on the list and exchange views (see the “*Pourvoi en cassation*” and “*Ministère Public et Cour suprême*” articles cited above and the speech given on 10 January 1997 by Mr Burgelin, Principal State Counsel at the Court of Cassation,

entitled “*L’avocat général à la Cour de cassation et la Convention européenne de sauvegarde des Droits de l’Homme*”, *Gazette du palais*, 23-24 May 1997). It appears to be customary after the meeting for the advocate-general to inform the lawyers acting in the case of the tenor of his submissions (see the speech entitled “*L’avocat général à la Cour de cassation et la Convention européenne de sauvegarde des Droits de l’Homme*” cited above).

In parallel, the reporting judge’s report is studied in detail by the offices of the president and the senior judge, which give a reasoned opinion in writing. Their opinion, together with the submissions of the advocate-general, are communicated to the reporting judge a few days before the hearing (see the “*Pourvoi en cassation*” article cited above).

79. Hearings of the Criminal Division are held in public and the procedure is the same as that in the other courts (Article 601 of the Code of Criminal Procedure).

The procedure before the Court of Cassation is nevertheless in written form; the parties’ lawyers are not required to appear at hearings. In the Criminal Division there is an oral hearing only in the (rare) cases where the parties’ lawyers have expressly requested one.

At the hearing the reporting judge is the first to address the court. He reads out his report but does not disclose his recommendations. If there are to be oral submissions, counsel for the appellant addresses the court first followed by counsel for the respondent; they may not submit any new legal argument. The advocate-general is the last to address the court; he makes submissions that are confined to legal issues and may concern the consideration of a ground of appeal raised by the court of its own motion (Article 602 of the Code of Criminal Procedure; and see the “*Pourvoi en cassation*” article cited above). It would appear that where oral submissions are made it is customary to allow the parties to reply to the advocate-general’s submissions, either orally or by a note addressed to the court in deliberations (see the speeches of Mr Jéol and Mr Burgelin referred to above).

##### 5. *Deliberations and adoption of the judgment*

80. After the public hearing, the members of the court deliberate in private. The reporting judge gives his opinion; the other judges and the president then express their views. Following a vote on whether the recommendations of the report should be adopted, the draft judgment, which each judge will have received eight days beforehand, is then considered (Article 603 of the Code of Criminal Procedure; and see also the “*Pourvoi en cassation*” article cited above).

The advocate-general generally attends the deliberations. In that connection, Mr Burgelin explained in his speech of 10 January 1997 (cited above): "... practice on this point is settled. If it is an important case that has (exceptionally) been pleaded by counsel, the advocate-general leaves the courtroom at the same time as the parties and the public in order clearly to demonstrate that the judges deliberate alone. In ordinary cases, the advocate-general usually remains in his seat but does not take part in the debate. His presence results from purely practical considerations relating to the number of cases, which is often substantial, to be heard at each sitting. It has no special signification" (see also Mr Jéol's speech referred to above).

81. The judgment in its adopted form is then finalised and delivered at a public hearing, in most cases immediately after the deliberations.

## PROCEEDINGS BEFORE THE COMMISSION

82. Mr Slimane-Kaïd applied to the Commission on 7 September 1993. He complained that in breach of Article 5 § 2 of the Convention he had not been informed promptly of the reasons for his arrest and of any charge against him; he maintained that the length of his pre-trial detention had been excessive, contrary to Article 5 § 3. He also alleged that there had been a violation of Article 6 § 3 (d) by virtue of the fact that he had not been present when the witnesses were heard and that there had been no confrontation with the prosecution witnesses, and submitted that there had been procedural defects in the investigation of the case that had violated his right to a fair hearing as guaranteed by Article 6 § 1. He further considered that Article 6 §§ 1 and 3 (b) had been infringed in that he had not been tried by an independent and impartial tribunal. Lastly, he complained that, contrary to Article 6 § 1, he had not had a hearing within a reasonable time and that, contrary to Article 6 §§ 1 and 3 (b), he had not had adequate facilities for the preparation of his appeal to the Court of Cassation, inasmuch as the reporting judge's report and the advocate-general's submissions had not been made available to him and he had been given no opportunity to reply to them.

83. In her application lodged on 11 September 1993, Mrs Reinhardt also raised the latter two complaints. She further maintained that she had not had a hearing before an independent and impartial tribunal with equality of arms within the meaning of Article 6 § 1 of the Convention and that, in breach of Article 6 § 3 (b) she had not had adequate facilities for the preparation of her case. Lastly, she added that the fact that there had been no confrontation with the prosecution witnesses and that she had not been present when the witnesses were heard amounted to a violation of Article 6 § 3 (d).

84. The Commission declared the applications of Mrs Reinhardt (no. 22921/93) and Mr Slimane-Kaïd (no. 23043/93) admissible on 22 January 1996 in so far as they concerned the length of the respective proceedings and the fact that the reporting judge's report and the advocate-general's submissions had not been made available to the applicants. It declared them inadmissible as to the remainder. In its two reports of 26 November 1996 (Article 31), it expressed the unanimous opinion that there had been a violation of Article 6 in respect of the two complaints referred to above. The full text of the Commission's opinions is reproduced as an annex to this judgment<sup>1</sup>.

## FINAL SUBMISSIONS TO THE COURT

85. In his memorial Mr Slimane-Kaïd asked the Court to

“declare that the French State failed to fulfil its obligations under [Articles 5 and 6 of the Convention] in that: his pre-trial detention was unduly long; he was not informed promptly of the reasons of his arrest and of any charge against him; during the investigation he did not have adequate facilities for the preparation of his defence; the investigation proceedings were defective; the trial courts were neither impartial nor independent; the proceedings before the Court of Cassation were not fair; a decision was reached in his case well before it was considered by the Criminal Division of the Court of Cassation; his case was decided by a different president from the one who actually presided over the Criminal Division of the Court of Cassation on 15 March 1993; he did not have a hearing within a reasonable time; he was sentenced to five-years' imprisonment, of which three years were suspended, and has been barred from carrying on a business activity for ten years, in other words until he is 62 years old; and, owing to the mysterious disappearance of the seized documents, he is unable to seek a retrial.”

86. In her memorial, Mrs Reinhardt asked the Court to

“declare that the French State failed to fulfil its obligations under [Article 6 of the Convention] in that: she was not informed promptly of the reasons of any charge against her for she did not learn of the reasons until a year after she was charged; during the investigation she did not have adequate facilities for the preparation of her defence; the investigation proceedings were defective; the trial courts were neither impartial nor independent; the proceedings before the Court of Cassation were not fair; a decision had been reached in her case well before it was considered by the Criminal Division of the Court of Cassation; her case was decided by a different president from the one who actually presided over the Criminal Division of the Court of Cassation on 15 March 1993; she did not have a hearing within a reasonable time; and, owing to the mysterious disappearance of the seized documents, she is unable to seek a retrial.”

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1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

87. The Government requested the Court to

“dismiss [the] application[s] ... as being manifestly ill-founded as regards [the] complaint[s] under Article 6 § 1 of the Convention.”

## AS TO THE LAW

### I. SCOPE OF THE CASE

88. Of the complaints now made by Mrs Reinhardt and Mr Slimane-Kaïd (see paragraphs 85 and 86 above), the only ones declared admissible by the Commission were the complaints under Article 6 relating to the length of the proceedings taken as a whole and the appeal procedure in the Court of Cassation; the applicants maintained that that procedure had been unfair because the reporting judge’s report had been disclosed to the advocate-general and the latter’s submissions had not been communicated to the applicants (see paragraph 84 above). The scope of the case before the Court is determined by the Commission’s decision on admissibility (see, for example, the *Van Orshoven v. Belgium* judgment of 25 June 1997, *Reports of Judgments and Decisions* 1997-III, p. 1049, § 33). It follows that the two complaints mentioned above are the only ones in issue before the Court.

### II. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

89. The applicants stated that they had not been tried “within a reasonable time” and considered that the proceedings in the Court of Cassation had been unfair. They relied on Article 6 §§ 1 and 3 (b) of the Convention, which reads:

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

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

...”

## A. Length of the proceedings

### 1. *Period to be taken into consideration*

90. It was common ground that the period to be taken into consideration when ruling on the applicants' two complaints had ended on 15 March 1993, when the Court of Cassation had delivered judgment (see paragraph 69 above). There was, however, a dispute as to when that period had started.

91. Mr Slimane-Kaïd considered that the proceedings had begun when the Versailles Regional Criminal Investigation Department ("RCID") sought information on Servec from the Chartres Commercial Court on 21 July 1984. Mrs Reinhardt maintained that the period to be taken into consideration in her case started on 16 October 1984, when she was first taken into police custody and her home was searched.

92. The Government and the Commission considered that the relevant dates were 2 October 1984, when Mr Slimane-Kaïd was taken into police custody, and 7 February 1985, when Mrs Reinhardt was charged.

93. The Court reiterates that in criminal matters, the "reasonable time" referred to in Article 6 § 1 begins to run as soon as a person is "charged"; this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened. "Charge", for the purposes of Article 6 § 1, may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test whether "the situation of the [suspect] has been substantially affected" (see the *Eckle v. Germany* judgment of 15 July 1982, Series A no. 51, p. 33, § 73).

The Court notes that Mr Slimane-Kaïd was not implicated until the period of police custody which ended with his being charged with misappropriation and procuring the issue of administrative documents by means of false information, certificates or statements (see paragraphs 12–13 above). In his case, the period to be taken into consideration therefore began on 2 October 1984 and the proceedings lasted eight years, five months and almost two weeks.

As for Mrs Reinhardt, she was taken into police custody on 16 October 1984 in connection with a preliminary inquiry concerning Mr Slimane-Kaïd, not her. In addition, as Mrs Reinhardt's home was the registered office of one of the companies managed by Mr Slimane-Kaïd, it is probable that through the search that was carried out there that same day it was intended to obtain evidence of the offences of which the latter was

suspected. Neither measure was therefore an “official notification” to Mrs Reinhardt of an “allegation” that she had committed a criminal offence. In her case, the relevant date is, at the latest, 6 February 1985 when the period of police custody that ended in her being charged began; the proceedings consequently lasted eight years, one month and just over a week.

*2. Reasonableness of the length of the proceedings*

94. Mrs Reinhardt and Mr Slimane-Kaïd said that their cases had not given rise to any particular complexity and that the delays in the proceedings had been caused solely by the investigating judges and the trial court, who, notwithstanding representations by their lawyers, had taken no action.

95. The Government stressed the “factual” complexity of the case, which concerned two separate investigations into a number of economic and financial offences committed in connection with companies that had overlapping interests. It had thus only been as the investigations progressed that the investigators had been able to find out the facts.

Furthermore, the Government argued that the Commission had found that there had been periods of inactivity during the investigation whereas in fact inquiries were being made and the investigating judge had accordingly been constantly active. While acknowledging that there had been “hold ups” in the investigation, the Government maintained that they had to be assessed by the yardstick of the case’s complexity, the applicants’ conduct and the relative speed with which the trial courts had subsequently heard the case.

Mr Slimane-Kaïd’s conduct had not been beyond criticism inasmuch as he and his lawyers had increased the investigating judge’s workload by failing to coordinate their interventions, producing a large number of documents and applying for various investigative measures to be taken. Mrs Reinhardt had not applied to be tried separately from Mr Slimane-Kaïd and had caused some delay by a failure to appear when summonsed by the investigating judge. Lastly, the applicants had used all the remedies available to them under French law.

In short, there had been no breach of Article 6 § 1.

96. The Commission expressed the view that the reason the proceedings had taken so long was due not to the complexity of the case or the applicants’ conduct, but mainly to the way the investigation had been conducted. With regard to the latter point, it considered that the interdependence of the charges against the applicants and of the criminal proceedings against them had justified the authorities’ considering their cases in a single set of proceedings. There had nevertheless been several periods of inactivity which, when taken together, had produced a delay of approximately two and a half years for which the Government had given no

convincing explanation. The Commission therefore concluded that there had been a violation of Article 6 § 1.

97. The Court reiterates that the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities (see, for example, the *Kemmache v. France* judgment (nos. 1 and 2) of 27 November 1991, Series A no. 218, p. 27, § 60).

98. The instant case began when the Iveco representative made statements to the Versailles RCID implicating Provex. Inquiries were made and an investigation opened into offences by an unnamed person of misappropriation and procuring the issue of administrative documents by means of false information, certificates or statements; in the course of the investigation Mr Slimane-Kaïd was charged with those offences. It was only as the investigation progressed and after a second complaint had been lodged by VPL against a person or persons unknown that the full details of the case – which concerned the way Provex, Servec and Urka had been managed and the relationship between those companies *inter se* and with Iveco and VPL – were established. It was only gradually that the numerous offences that had been committed came to light. However, although the circumstances described above demonstrate how complex the investigating authorities' task was, they cannot by themselves justify the investigation's having taken five years.

99. As to the applicants' conduct, the Court notes that Mr Slimane-Kaïd and his lawyers sent various requests and documents to the successive investigating judges without visibly coordinating their strategy. That would not have made the judges' task any easier or speeded up the proceedings. Mr Slimane-Kaïd and his advisers did not however repeatedly act in that manner until 1988 onwards, by which point the investigation had already been under way for more than three years (see paragraphs 42 et seq. above), and it does not appear from the case file that their conduct caused any significant delays. People charged with criminal offences cannot, moreover, be criticised for sending to the judicial officers handling the investigation of their case evidence that they consider establishes their innocence or for asking them to investigate particular matters.

Although Mrs Reinhardt did not appear before the investigating judge on 4 December 1985 as required in his summons and was consequently not heard until 11 February 1986 (see paragraph 29 above), the resulting delay was minimal compared with the overall length of the proceedings.

Lastly, no blame can attach to the applicants for having used all the remedies available to them under French law, even though in so doing they undoubtedly prolonged the proceedings.

100. There can be no criticism of the trial and appeal courts for their handling of the case, because the Court of Cassation delivered its judgment on 15 March 1993 (see paragraph 69 above), that is to say three years and three months after the committal to the criminal court (see paragraph 59 above).

The conduct of the investigating authorities is a different matter. The head of the Versailles RCID did not report back to Judge Candau further to the latter's instructions of 7 February 1985 to pursue the investigation until 31 May 1985 and the judge took no action until 4 December 1985 (see paragraphs 28–29 above); the public prosecutor did not make his submissions, which had been requested on 25 March 1986, until 21 July 1986 (see paragraphs 30 and 32 above) and, other than the hearing of the VPL representative on 5 February 1987, no steps were taken in the investigation between 29 September 1986 (when the public prosecutor applied for an investigation to be started concerning a person or persons unknown following the complaint lodged four days earlier by VPL) and 11 June 1987 (when Mr Slimane-Kaïd was questioned – see paragraphs 34–37 above); the Versailles RCID's report pursuant to the instructions of 7 October 1987 was not sent until 25 April 1988 and, apart from ordering on 28 October 1987 that an expert's report be commissioned on the signatures at the foot of the certificates of sale in question, the investigating judge took no further steps until 25 May 1988; furthermore, although the expert's report was filed on 31 December 1987, it was not served on the parties claiming civil damages until 29 April 1988 (see paragraphs 40–45 above); lastly, with the exception of the confrontation between Mr Slimane-Kaïd and the VPL representative on 5 December 1988, no step was taken in the investigation between 29 June 1988 (when Mr Slimane-Kaïd was questioned) and 16 March 1989 (when instructions were sent to the Chartres police superintendent – see paragraphs 47–51 above).

Consequently, although conscious of the difficulties the investigating officers may have encountered, the Court considers that the length of the proceedings was largely a result of the investigation not being carried out expeditiously. It accordingly considers, without its being necessary to decide whether the authorities were at fault in not ordering separate trials, that with respect to both Mrs Reinhardt and Mr Slimane-Kaïd the proceedings lasted more than a “reasonable time” and that there has therefore been a violation of Article 6 § 1.

**B. Whether the proceedings in the Court of Cassation were fair**

101. The applicants maintained that they had not had a fair hearing in the Court of Cassation.

Neither they nor their counsel had received the reporting judge's report before the hearing, whereas the advocate-general had. The practice relied on by the Government – which incidentally did not exist at the material time – whereby the report's recommendations are noted on the list of cases distributed a week before the hearing to the lawyers practising in the *Conseil d'Etat* and Court of Cassation, only enabled parties to know whether the reporting judge had recommended allowing the appeal in whole or in part, declaring it inadmissible or dismissing it; the practice could not therefore operate to remedy so significant a breach of the adversarial principle.

Nor had they had an opportunity to reply to the advocate-general's submissions. Yet, as society's representative before the Court of Cassation he had been the applicants' opponent so that, under the adversarial principle, the applicants should have been able to reply. In that connection, they acknowledged that lawyers practising in the *Conseil d'Etat* and Court of Cassation were now entitled to reply to the advocate-general's submissions, but pointed out that the proceedings were nonetheless "focused" on the written submissions and that it was extremely rare for there to be oral submissions before the Criminal Division.

102. The Government responded that the advocate-general at the Court of Cassation does not act as a prosecutor; he expresses his views in complete independence on the way in which the law should be construed and applied. There could be no question of "inequality" between him and an appellant because he was not a "party" to the proceedings.

At all events, the reporting judge's report was drawn up by one of the members of the court and was consequently confidential since it formed part of the deliberations. There was thus no requirement under the adversarial principle for its communication to the parties. The parties had, furthermore, the possibility of acquainting themselves with the part of the report dealing with the facts and the grounds of appeal on points of law when it was read out at the hearing. As for the recommendations, they were set out in substance in a note on the list of cases distributed to the lawyers practising in the *Conseil d'Etat* and Court of Cassation.

It was in addition settled practice for lawyers appearing in a case to be informed before the hearing of the tenor of the advocate-general's submissions – which in general were not in writing – and it was accepted that they were entitled subsequently to file a "supplementary note" in addition to their initial pleading.

The applicants' lawyers had therefore been afforded an opportunity to assess whether they ought to make oral representations to the Criminal Division and the judicial authorities could not be held responsible for the consequences of their decision not to. All they had needed to do was to seek leave from the President of the Criminal Division, which would have been granted in accordance with the prevailing practice. They would then have had the right to address the court last, after the reporting judge and the advocate-general. Regard being had to the nature of the latter's submissions, the high degree of specialisation of the lawyers practising in the *Conseil d'Etat* and Court of Cassation and the fact that they were entitled to file a note with the court while it was deliberating, the adversarial principle had been complied with.

103. The Commission considered that the opinion of Principal State Counsel's Office at the Court of Cassation could not be regarded as neutral viewed from the standpoint of the parties to the proceedings. By recommending that an accused's appeal be allowed or dismissed, the representative of Principal State Counsel's Office becomes objectively speaking the accused's ally or opponent. The issue of compliance with the principle of equality of arms and the adversarial principle were accordingly relevant in the instant case.

The fact that the reporting judge's file, including his report and one or more draft judgments, had been communicated to the advocate-general whereas the applicants could only be informed of the recommendations of the report meant that there had been inequality of arms between the applicants and the advocate-general. The imbalance had been accentuated by the fact that the advocate-general's submissions had not been communicated to Mrs Reinhardt and Mr Slimane-Kaïd. The right to adversarial proceedings meant in principle "the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court's decision" (see the report, paragraph 31). The parties should in addition have a "genuine opportunity" (*ibid.*) to comment on the advocate-general's submissions. In the present case, however, if the applicants' lawyers had been present at the hearing they would only have been able to make an impromptu reply. There had therefore been a breach of Article 6.

104. The Court will examine whether, taken as a whole, the proceedings before the Criminal Division of the Court of Cassation were in the instant case "fair" within the meaning of Article 6 § 1.

105. It was common ground that well before the hearing the advocate-general had received the report and draft judgment that had been prepared by the reporting judge. As the Government said, the report was in two parts: the first contained a description of the facts, procedure and grounds of appeal and the second a legal analysis of the case and an opinion on the merits of the appeal.

Those documents were not communicated to either the applicants or their lawyers. Currently, parties' lawyers are informed of the recommendation in the report (whether an appeal is to be declared inadmissible, to be dismissed, or to be allowed in whole or in part – see paragraph 73 above) by a note in the list of cases that is distributed a week before the hearing to lawyers practising in the *Conseil d'Etat* and Court of Cassation.

Mrs Reinhardt's and Mr Slimane-Kaïd's lawyers could have made oral submissions if they had so requested; at the hearing they would have had the right to address the court after the reporting judge, which would have meant that they would have been able to hear the first part of his report and to comment on it. The second part of the report and the draft judgment – which were legitimately privileged from disclosure as forming part of the deliberations – could not in any event be communicated to them; at best, they would thus have learnt of the recommendation in the reporting judge's report a few days before the hearing.

Conversely, the entire report and the draft judgment were communicated to the advocate-general. The advocate-general is not a member of the court hearing the appeal. His role is to ensure that the law is correctly applied when it is clear and correctly construed when ambiguous. He “advises” the judges on the solution in each individual case and, through the authority of his office, he may influence their decision in a way that is either favourable or runs counter to the case put forward by appellants (see paragraphs 74 and 75 above).

Given the importance of the reporting judge's report (and in particular the second part thereof), the advocate-general's role and the consequences of the outcome of the proceedings for Mrs Reinhardt and Mr Slimane-Kaïd, the imbalance thus created by the failure to give like disclosure of the report to the applicants' advisers is not reconcilable with the requirements of a fair trial.

106. The fact that the advocate-general's submissions were not communicated to the applicants is likewise questionable.

Admittedly, current practice is for the advocate-general to inform the parties' lawyers no later than the day preceding the hearing of the tenor of his submissions and in cases where, at the request of the lawyers, there is an oral hearing, they are entitled to reply to his submissions orally and by a note sent to the court in deliberations (see paragraph 79 above). In the light of the fact that only questions of pure law are argued before the Court of

Cassation and that the parties are represented in that court by highly specialised lawyers, that practice affords parties an opportunity of apprising themselves of the advocate-general's submissions and commenting on them in a satisfactory manner. It has not, however, been shown that such a practice existed at the material time.

107. Consequently, regard being had to the circumstances referred to above, there has been a violation of Article 6 § 1.

### III. APPLICATION OF ARTICLE 50 OF THE CONVENTION

108. Article 50 of the Convention 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

109. Mr Slimane-Kaïd claimed 6,000,000 French francs (FRF) as compensation for non-pecuniary damage and the sixteen months he had spent in detention. He maintained, furthermore, that the companies he had managed – Servec, Provex and Urka – had ceased trading as a result of his being detained pending trial and had been forced to file in bankruptcy by the judicial authorities; he requested payment of a “minimum” of FRF 41,923,576, being the amount of lost salary and dividends and of his capital investment in the companies.

Mrs Reinhardt requested the Court to award her FRF 1,000,000 for non-pecuniary damage. She further claimed a “minimum” of FRF 6,720,000 for the salary and dividends she had been deprived of as a result of Urka's ceasing to trade and for the ensuing loss of the business and her pension rights.

110. In the Government's submission, the applicants had not provided any evidence to justify the “exorbitant” sums they claimed; only losses caused by the breaches found could give rise to reparation. Moreover, in similar cases, the Court had considered that a finding of a violation of the Convention constituted sufficient just satisfaction.

111. The Delegate of the Commission did not express a view.

112. The Court finds that there was no causal link between the pecuniary damage alleged by the applicants and the infringement of their right to a fair hearing or to a hearing within a “reasonable time”. As to the non-pecuniary damage referred to by the applicants, the conclusions that appear in paragraphs 100 and 107 above constitute sufficient compensation.

### **B. Costs and expenses**

113. Both applicants sought reimbursement of their costs and expenses.

114. Neither the Government nor the Commission made any observation.

115. The Court notes that the applicants have neither quantified nor detailed their claims, which are consequently dismissed.

### **FOR THESE REASONS, THE COURT**

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention in that the applicants’ case was not heard within a reasonable time;
2. *Holds* by nineteen votes to two that there has been a violation of Article 6 § 1 of the Convention in that the applicants did not have a fair hearing in the Court of Cassation;
3. *Holds* by twenty votes to one that the present judgment in itself constitutes sufficient just satisfaction for the alleged non-pecuniary damage;
4. *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 31 March 1998.

*Signed:* Rudolf BERNHARDT  
President

*Signed:* Herbert PETZOLD  
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Mr Pettiti;
- (b) partly dissenting opinion of Mr Thór Vilhjálmsson;
- (c) partly dissenting opinion of Mr De Meyer;
- (d) partly dissenting opinion of Mr Foighel.

*Initialled: R. B.*

*Initialled: H. P.*

## CONCURRING OPINION OF JUDGE PETTITI

*(Translation)*

The Court was unanimous on the first issue (length of the proceedings). In order to put the second part of the judgment in clearer perspective in the Court's case-law, I think it useful to reiterate that the applicants maintained that the failure to communicate the reporting judge's report in full to their lawyers had infringed the adversarial principle and the fact that it had been impossible for either the applicants or their counsel to reply to the advocate-general's submissions was contrary to the principle of equality of arms.

The advocate-general's presence at the deliberations was also criticised.

In its decision the Court examined the proceedings taken as a whole (see paragraph 104 of the judgment). Its main finding was that with regard to the reporting judge's report there had been a breach of the principle of fairness since it had been communicated to the advocate-general, but not to the lawyers.

In paragraph 105 of the judgment the Court uses the expression "like" in distinguishing the two parts of the report. The "draft judgment" section remains confidential if intended solely for the chamber. The first part containing a description of the facts and grounds of appeal should, if communicated to the advocate-general, also be communicated to the parties' lawyers (following the reasoning in paragraph 106 of the judgment); that did not happen in the Reinhardt and Slimane-Kaïd case in which no oral submissions were made at the hearing. In paragraphs 74 and 75 of the judgment the Court referred to the special role of the advocate-general at the Court of Cassation: he is not a party to the proceedings (but a party "joined" to the criminal proceedings) and receives no instructions regarding the performance of his duties.

The Court notes in its judgment the changes that have been made to the practice of the Court of Cassation regarding oral submissions at hearings.

The wording used in the present judgment is not the same as that used in particular in similar Belgian cases (in which the Court found a violation); thus in the *Borgers v. Belgium* judgment (which concerned criminal proceedings) the Court spoke of breaches (apparent or alleged) with respect to the issues of independence and impartiality, the rights of the defence and equality of arms (paragraphs 24, 28 and 29). But that case was different from the Reinhardt and Slimane-Kaïd case.

In its judgment in the *Vermeulen v. Belgium* case (which concerned civil proceedings) the Court relied on the fact that it was impossible for the applicant to reply to the advocate-general's submissions before the end of the hearing in finding a breach of the right to adversarial proceedings (paragraph 33). In our dissenting opinion Mr Gölcüklü, Mr Matscher and I said in particular that there was no reason to view the advocate-general as an adversary of either party.

In its judgment in the *Van Orshoven v. Belgium* case (civil proceedings concerning the *ordre des médecins*) the Court again relied on the fact that it had been impossible to reply before the end of the hearing (without referring to the theory of appearances or adopting the wording used in paragraph 37 of the *Vermeulen* judgment). In our separate opinions, Mr Storme and I noted the special nature of the *procureur général's* department at the Court of Cassation in Belgium.

A comparison of the judgments therefore sheds greater light on the question. In any event, the Court has not assimilated the role of the advocate-general at the Court of Cassation to that of the Advocate General at the Court of Justice of the European Communities.

PARTLY DISSENTING OPINION  
OF JUDGE THÓR VILHJÁLMSOON

I agree with the judgment in this case as far as it finds a violation of Article 6 § 1 of the Convention in that the applicants' case was not heard within a reasonable time.

On the other hand, I am of the opinion that there was no violation of that Article with regard to the fairness of the hearing.

The procedure followed in the Criminal Division of the French Court of Cassation is specific. In my opinion, the rules applied as a whole and, in particular, the roles played by the reporting judge and the advocate-general contribute to an examination of cases and preparation of judgments that are thorough and fair to defendants. Admittedly, only the main points of the report and conclusions of the reporting judge are communicated to defendants' lawyers. This communication nevertheless distinguishes the present case from earlier cases concerning the role of advocates-general described in other judgments of our Court. In my opinion, the information thus provided before the hearing is sufficient. Counsel for the defendants in this case had the opportunity to request an oral hearing and to prepare themselves for such a hearing. At the hearing they would have been able to answer the comments made by the advocate-general and he would not have been present at the subsequent deliberations. His presence at the deliberations when there is no oral hearing is not likely to be to the disadvantage of the defendant or to give the impression of unfairness.

The rules on the procedure before the Court of Cassation have been developed over a long period of time. I find them balanced, finely tuned and unbiased, even if they are somewhat foreign to lawyers from other European countries with other traditions and systems. I am also basically of the same opinion on the legal questions here under scrutiny, as I stated in my dissenting opinion in the *Borgers* case.

Accordingly, I find myself in a minority on point 2 of the operative provisions of the present judgment.

## PARTLY DISSENTING OPINION OF JUDGE DE MEYER

(Translation)

### I. Length of the proceedings

In this case there is no doubt that the length of the proceedings was excessive.

The proceedings started, in my opinion, when “inquiries were made and an investigation opened” into the relevant offences<sup>1</sup>, that is to say at the latest on 1 August 1984, when the public prosecutor attached to the Chartres *tribunal de grande instance* ordered a “preliminary investigation”<sup>2</sup> into the activities of the Servec and Provex companies<sup>3</sup>, which led shortly afterwards to investigations into the Urka company<sup>4</sup>.

That is the date that should be taken as the starting-point of the proceedings in the cases of both Mr Slimane-Kaïd and Mrs Reinhardt, who were taken into police custody on 2 October 1984<sup>5</sup> and 16 October 1984<sup>6</sup> respectively, both in connection with the inquiries.

The date “the person concerned is officially notified that he would be prosecuted”<sup>7</sup> is less important than the date “preliminary investigations are opened”<sup>8</sup>, in cases – as is usual and as occurred here – where the latter date is earlier than the former.

### II. Whether the proceedings in the Court of Cassation were fair

I have not been persuaded that the applicant’s right to a fair hearing has been violated.

The Court has always accepted that in court systems such as those in France and Belgium, members of Principal State Counsel's Office at the Court of Cassation perform their duties entirely independently, impartially and objectively and, save in exceptional circumstances, cannot in any way be considered as parties to appeals to the Court of Cassation<sup>9</sup>.

Yet, since the Borgers judgment, it has on more than one occasion condemned their presence at deliberations<sup>10</sup> and the fact that at the hearing they address the court last, without communicating their submissions to the parties beforehand<sup>11</sup>.

In the instant case the Court also disapproves of the practice whereby, with a view to the hearing, the advocate-general is given the reporting judge’s reports and draft judgments, but the parties are not<sup>12</sup>.

What harm lies in these practices? In what way do they adversely affect the fairness of the proceedings? Surely representatives of State Counsel's Office at the Court of Cassation are, like the judges of that court and in particular the reporting judges, independent, impartial and objective, both in law and in practice? Should they not be so presumed until proved otherwise<sup>13</sup>?

Has it been suggested or is there any reason to think that in the present case Mr Culie, the reporting judge, and Mr Libouban, the advocate-general, were not independent or failed to comply with the duty to be impartial and objective that is inherent in their office<sup>14</sup>? In any event, it has not been shown, or even alleged, that the concerns the applicants may have had in that regard could be “considered objectively justified”<sup>15</sup>.

It is interesting to note that the Court takes care to avoid repeating in the present judgment some of the bad arguments it relied on in previous judgments and on which the Commission again relied in the instant case<sup>16</sup>.

The Court also avoids considering the issue in relation to the “requirements imposed by the principles of the rights of the defence and equality of arms”<sup>17</sup> or the “right to adversarial proceedings”<sup>18</sup> and likewise abstains from mentioning the “role of appearances in determining whether they have been complied with”<sup>19</sup>. It therefore no longer suggests that those requirements may apply to the relationship between Principal State Counsel's Office at the Court of Cassation and the parties or that appearances have a part to play in this domain. Yet ultimately it is still on the basis of appearances, which cannot mislead those who know the true position<sup>20</sup>, that it considers that the applicants' right to a fair hearing had been infringed, whereas “looking beyond appearances” one “does not find the realities of the situation to be in any way in conflict with that right”<sup>21</sup>.

Nor does it reiterate that “by recommending that an accused's appeal be allowed or dismissed”, the representative of Principal State Counsel's Office “becomes objectively speaking his ally or his opponent”<sup>22</sup>. The very fact that both possibilities exist clearly shows him to be neutral. He does not lose that neutrality when making his submissions one way or the other<sup>23</sup>, any more than the reporting judge when giving his opinion or the Court of Cassation when delivering judgment. Could it also be said that the Court of Cassation becomes “objectively speaking the ally” of the “winning” party and “objectively speaking the opponent” of the “losing” party?

The fact is that neither the reporting judge nor the advocate-general can be dissociated from the court itself. The reporting judge's report and draft judgment and the advocate-general's submissions remain independent of the debate between the parties, as they form part of the process of preparation of the decision, in readiness for the actual deliberations. The fact that the reporting judge and the advocate-general communicate those documents to each other before the hearing without informing the parties of their content does not in any way adversely affect the fairness of the proceedings.

The position here is very different from cases concerning the observations of a "prosecuting authority", such as, in the present case, the Chartres public prosecutor or the public prosecutor attached to the Versailles Court of Appeal or, in the Bulut case, the Attorney-General attached to the Austrian Supreme Court<sup>24</sup>, as it is obvious that the prosecution cannot be allowed to bring anything to the court's attention without the defence being informed.

Nor did the present case concern observations of a lower court that had heard the case at an earlier stage, such as those that were submitted in the Nideröst-Huber case by the Schwyz Cantonal Court to the Federal Court<sup>25</sup>. That practice too is only acceptable if the observations are communicated to the parties.

## NOTES

1. Paragraph 98 of the judgment.
2. Paragraph 20 of the Commission's report in the case of Mr Slimane-Kaïd. In his memorial, he said that an inquiry had already been started by the Versailles Regional Criminal Investigation Department on 21 July 1984 (see p. 6, § 23 of that memorial).
3. Paragraphs 17 to 19 of the Commission's report in the case of Mr Slimane-Kaïd.
4. Paragraphs 17 to 19 of the Commission's report in the case of Mrs Reinhardt.
5. Paragraphs 13 and 92 of the judgment.
6. Paragraphs 19 and 91 of the judgment.
7. Paragraph 93 of the judgment.
8. Ibid. See also the *Deweer v. Belgium* judgment of 27 February 1980, Series A no. 35, p. 24, § 46, and the *Eckle v. Germany* judgment of 15 July 1982, Series A no. 51, p. 33, § 73.
9. See the judgments in *Delcourt v. Belgium* of 17 January 1970, Series A no. 11, pp. 15-18, §§ 29-38; *Borgers v. Belgium* of 30 October 1991, Series A no. 214-B, p. 31, § 24; *Vermeulen v. Belgium* of 20 February 1996, *Reports of Judgments and Decisions* 1996-I, p. 233, § 30; and *Van Orshoven v. Belgium* of 25 June 1997, *Reports* 1997-III, p. 1051, § 38.
10. See the *Borgers* judgment, cited above, p. 32, § 28, and the *Vermeulen* judgment cited above, p. 234, § 34.
11. See the judgments in *Borgers*, cited above, p. 32, § 27; *Vermeulen* cited above, p. 234, § 33; and *Van Orshoven* cited above, p. 1051, § 41; see also paragraphs 79 and 106 of the judgment.

12. See paragraphs 73 and 105 of the judgment.
13. Their role is scarcely any different from that of the Advocates General at the Court of Justice and the Court of First Instance of the European Communities or of the Government Commissioners (“*commissaires du gouvernement*”) at the *Conseil d’Etat* in France. It is above all vital not to be misled by the titles of certain functions: in that connection, it is worth noting that at the Court of First Instance of the European Communities the office of Advocate General is exercised by judges of that court, appointed by the president.
14. See the Delcourt judgment cited above, p. 19, § 38.
15. See, *mutatis mutandis*, the following judgments: Hauschildt v. Denmark, 24 May 1989, Series A no. 154, p. 21, § 48, Padovani v. Italy, 26 February 1993, Series A no. 257-B, p. 20, § 28, and Remli v. France, 23 April 1996, *Reports* 1996-II, p. 574, § 46, as well as Fey v. Austria, 24 February 1993, Series A no. 255-A, p. 12, § 30, and Nortier v. the Netherlands, 24 August 1993, Series A no. 267, p. 15, § 33.
16. See paragraph 103 of the judgment.
17. See the Borgers judgment cited above, p. 32, §§ 26 and 29.
18. See the Vermeulen judgment cited above, p. 234, § 33.
19. See the Borgers judgment cited above, p. 32, § 29.
20. Must one also say that at Westminster there is no fair hearing in the House of Lords either, because the judges – the Law Lords – are also legislators and the President, the Lord Chancellor, is not only the President of that Court but also, at the same time, a member of Her Majesty’s Government?
21. See the Delcourt judgment cited above, p. 17, § 31.
22. See the Borgers judgment cited above, pp. 31–32, § 26.
23. See the Delcourt judgment cited above, p. 18, § 33.
24. See the Bulut v. Austria judgment of 22 February 1996, *Reports* 1996-II, pp. 352 and 359–60, §§ 14 and 47–50.
25. See the Nideröst-Huber v. Switzerland judgment of 18 February 1997, *Reports* 1997-I, pp. 105 and 108–09, §§ 10 and 24–32.

### PARTLY DISSENTING OPINION OF JUDGE FOIGHEL

I regret that I cannot agree with the majority view that the present judgment constitutes in itself sufficient just satisfaction for the alleged non-pecuniary damage.

The majority of the Court have given no reasons in paragraph 113 for declining to order that just satisfaction under Article 50 should take the form of financial compensation.

It cannot reasonably be said that the applicants did not suffer non-pecuniary damage.

By not awarding a sum of money as just satisfaction the Court diminishes the seriousness of the violations found and limits its ability to promote respect for the Convention.