



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

THIRD SECTION

CASE OF CALOC v. FRANCE

(Application no. 33951/96)

JUDGMENT

STRASBOURG

20 July 2000

In the case of Caloc v. France,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr W. FUHRMANN, *President*,

Mr J.-P. COSTA,

Mr P. KÜRIS,

Mrs F. TULKENS,

Mr K. JUNGWIERT,

Mrs H.S. GREVE,

Mr K. TRAJA, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 11 January and 4 July 2000,

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

PROCEDURE

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), by the European Commission of Human Rights (“the Commission”) on 3 June 1999 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. The case originated in an application (no. 33951/96) against the French Republic lodged with the Commission under former Article 25 of the Convention by a French national, Mr Adrien Caloc (“the applicant”), on 6 May 1996.

3. The applicant alleged that he had been subjected to inhuman and degrading treatment while in police custody (Article 3 of the Convention) and complained of the excessive length of the criminal proceedings which he had brought (and applied to join as a civil party) against those presumed to have been responsible for the ill-treatment (Article 6 of the Convention).

4. The Commission declared the application admissible on 25 May 1998. In its report of 3 March 1999 (former Article 31 of the Convention), it expressed the opinion by twenty-eight votes to one that there had not been a violation of Article 3 and that there had been a violation of Article 6 as regards the length of the impugned proceedings¹.

5. Before the Court the applicant was granted legal aid.

6. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with the provisions of Article 5 § 4 of that Protocol read in conjunction with Rules 100 § 1 and 24 § 6 of the

1. *Note by the Registry.* The report is obtainable from the Registry.

Rules of Court, a panel of the Grand Chamber decided on 7 July 1999 that the case would be examined by a Chamber constituted within one of the Sections of the Court. The President of the Court subsequently assigned the case to the Third Section, in accordance with Rule 52 § 1. Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

7. The applicant and the French Government (“the Government”) each filed a memorial.

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 11 January 2000 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*

Mrs M. DUBROCARD, Head of the Human Rights Section, Legal Affairs Department, Ministry of Foreign Affairs,	<i>Agent,</i>
Mr G. BITTI, Human Rights Office, European and International Affairs Department, Ministry of Justice,	<i>Counsel,</i>

(b) *for the applicant*

Mr R. AUTEVILLE, of the Fort-de-France Bar,	<i>Counsel.</i>
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The Court heard addresses by them.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. At 2 p.m. on 29 September 1988 the applicant reported to the police station (gendarmerie) at Le Lorrain, in Martinique, to be questioned in connection with a complaint lodged by a contractor, Mr Vildeuil, the applicant's former employer, who suspected him of having sabotaged his two bulldozers.

10. At 2.30 p.m. the applicant was taken into police custody. According to the report drawn up by Mr Bavarin, the police officer in charge of the investigation, the applicant ran off after learning that his wife had told the police officers that he sometimes got up during the night. He was caught fifty metres further on and was taken, struggling, back to the police station.

There he offered further resistance, kicking out. He was restrained with the assistance of the brigade commander, Mr Gaillard.

11. At 5 p.m. the applicant was examined by Dr Thomas, who, after taking his blood pressure and carrying out a cardiovascular examination and an auscultation of the lungs, found nothing amiss.

12. The applicant was questioned again from 7 p.m. to 11 p.m. and denied having committed the offence. However, he did not dispute that he had run away from the police station and had resisted the police officers who were attempting to arrest him. According to the record of the interview, which took place at 10 p.m., the applicant stated:

“At 2.30 p.m., when I came to the police station following your request, you told me that you suspected me of having sabotaged Vildeuil's bulldozers ... You said that my wife had told you that I sometimes got up during the night, and that is when I ran off. You managed to catch me fifty metres further on; I struggled to break free, but I had no intention of getting away. When you took me to the station, I again put up a struggle because I didn't want to go to prison. It is true that I tried to get away, but if I had managed to escape, I would have come back. I stamped my feet when you held me on the premises, and if I kicked any of you, it was unintentionally. ... When I tried to run away, it was to see my wife and get her to come to the police station so that she could tell you in front of me whether I went out at night. ...”

13. At 11.30 p.m., because there was substantial, consistent evidence to justify charging him with forceful resistance to a public officer, the applicant was placed in a security cell, where he remained until 8 o'clock the following morning (30 September). When questioned again by the senior police officer (*officier de police judiciaire*), he admitted having caused the damage and signed a statement to that effect at 10.30 a.m. He was allowed a rest from 10.30 a.m. to 11.30 a.m. At 11.30 a.m. he was questioned once again and confirmed his previous confessions, adding that he was sorry that he had “jostled” the police officers while attempting to escape.

14. At 1 p.m., after signing the record of his detention in police custody and his last statement, which, like the earlier ones, had been read aloud to him because he had stated that he could not read or write French very well, the applicant was released.

A. The complaint and civil-party application lodged by the applicant

15. On 1 October 1988, the day after being released from custody, the applicant was examined by Dr Kéclard. The medical certificate drawn up by the doctor stated: “[The applicant] has heavy bruising on the right anterior deltoid, with impaired mobility of the right shoulder. There are also signs that both wrists have been bound, causing pain and reduced mobility. Lastly, he complains of lumbar pain and problems with movement; the pain is accompanied by temporary scoliosis due to muscular contraction. His condition requires him to stop work for eight days and to receive treatment.”

The doctor prescribed eight days' sick-leave. On 9 October 1988 he extended the sick-leave until 20 October 1988.

16. On 18 November 1988 the applicant lodged a complaint against the Le Lorrain police with the Fort-de-France public prosecutor, alleging assault occasioning actual bodily harm and relying on the certificate issued on 1 October 1988.

17. In the complaint the applicant stated:

“On Thursday 29 September [1988] ... I was received [at the police station] at 2.15 p.m., and before I had even sat down, the police officer ... started reading out a list of questions. He told me that I had put sand in Mr Vildeuil's tractors, and I said that that was not true ... He then said that he would go and get my wife. I said no, because, knowing my wife, I was sure that she would have refused to follow him out of fear and she would have been worried. The police officer followed me menacingly and I ran towards the car. He then shoved and punched me, saying that I had been trying to leave and would not have come back – even though I had turned up at the station as requested. I told him to let go of me and we went back to the station. He continued to grip me more and more firmly while pushing me about, and flung me on to the front doorstep with a judo throw. The officer called two of his colleagues, who arrived straight away. They were wearing shorts but were bare-chested. One of them sat astride me and twisted my arm behind my back, another put his foot on my head, and the third one, after fetching a bag of handcuffs and passing it to the one who was sitting on my back, held my feet. They handcuffed me, put the chain around my neck and fastened it to my other arm. I was lying on the ground, practically strangled by the chain. ... The officers then sent me to the cell, where I remained until the next day without anything to eat ... They let me out the next day, 30 September, and handcuffed me to a chair leg. The police officer questioned me again and asked me ... if I had put sand in a tractor. I said no ... The officer called me a liar and a thief ... I didn't argue and I said that I [had] rights. He made fun of me and made me sign a piece of paper, without even reading out what he had written on it. I signed the document without knowing what it was about, not only because of my reading difficulties but also because of his threatening tone, everything I had just gone through and the worsening pain in my shoulder...”

18. On 30 November 1988, in view of the substance of the complaint, the public prosecutor's office initiated a police investigation.

19. On 12 December 1988 a further complaint was lodged against the applicant by a Mr Remir, who likewise suspected him of damaging machinery, and a police investigation was started.

20. On 23 February 1989 at 8.30 a.m. the applicant was taken into police custody in connection with the investigation; he remained in custody until 8 o'clock the following morning. He was questioned by Mr Munier, of the Le Lorrain police (see paragraph 65 below), and admitted the offence.

21. Between 4 p.m. and 6 p.m. the applicant was questioned about the circumstances in which he had been held in police custody on 29 and 30 September 1988. During the interview the applicant stated:

“On 29 September 1988 I reported to the Le Lorrain police station, as I had been asked to do ... I made to leave the building to find my wife. I did so rather quickly ...

The police officer caught up with me in the street fifty metres away from the police station ... He held me and I grabbed his arm so that I would not have to follow him to the station. He dragged me to the police station courtyard and as he said he was going to lock me up, I tried to escape. I struggled because he was holding on to me. Two other officers, not in uniform, came to help him get me inside the building. They came because I was gesticulating wildly ... The three of them then restrained me, handcuffed me and put me in the cell. Five or ten minutes later, when I had calmed down, they took the handcuffs off. ... At one point [one of the police officers] took me out and handcuffed one of my hands to a chair. When he questioned me, I admitted having sabotaged Vildeuil's bulldozer by putting sand in the engine. It is true I confirm that I committed that offence ...

I did not write a letter to the public prosecutor. Since my arm hurt as a result of the struggle with the police officers, I went [to see a doctor] ... who told me to see a lawyer. I accordingly went to see Mr Manville [who wrote a letter] ... I knew when I signed the letter that it was to lodge a complaint against the police officers, but I did not really understand what was written in the letter; I understood only part of it. I maintain that the police officers did all the things mentioned in the letter, but they did them only because I was putting up resistance and struggling as I did not want to stay at the police station: I wanted to go back and see my wife.

When I signed the letter I understood what it meant.

I lodged a complaint against the police officers because I was worked up and annoyed with them and I like being free and not locked up. I now regret what I did because I know I was wrong.”

22. On 27 February 1989 police officers from a different force (the La Trinité gendarmerie) were instructed by the public prosecutor's office to obtain information about the complaint lodged by the applicant on 18 November 1988. On 28 February 1989, from 9.20 a.m. to 10 a.m., officers from the La Trinité police interviewed Dr Kéclard at his surgery as a witness. During that interview Dr Kéclard stated:

“... On the morning of 1 October I did indeed examine Adrien Caloc. He presented with cervical and lumbar pains and showed signs of bruising. He informed me that he had been beaten by the Le Lorrain police. The patient did not indicate the date of the events, but my findings suggested that they could have taken place the previous day or the day before that. At his request I issued a detailed medical certificate ... On the same day I ordered an X-ray of his cervical vertebrae, lumbar vertebrae and right shoulder. On 3 October 1988 the patient brought back the X-rays ... The examination did not reveal any lesions to the bones or joints. I saw Caloc again on 12 October 1988 at his request; as his right shoulder was still causing him pain, I prescribed additional medical treatment. On 29 October 1988, since the medical treatment had not alleviated the pain, I referred him to the physiotherapist. I should add that as on 29 October 1988 Mr Caloc complained of his left shoulder, I ordered an X-ray of that shoulder; the results did not indicate any lesions to the bones or joints. I prescribed treatment for the left shoulder only. My client followed the course of treatment and in fact the physiotherapist informed me that the treatment had had a beneficial effect. I have not seen Mr Caloc since 29 October 1988.

When I examined Mr Caloc on 1 October 1988, he did not mention any pain in his left shoulder. It was not until 29 October 1988 that he complained of pain in that

region, without alluding to what had caused the pain. When I examined my patient's left shoulder, I did not observe any loss of mobility or any deformation, but because he complained of pain, I ordered the X-ray and subsequently the physiotherapy.”

23. The applicant was likewise interviewed by officers from the investigation unit of the La Trinité force and held in police custody from 3.30 p.m. on 28 February 1989 until 11 a.m. on 1 March 1989. It appears from the record of the interview that he was taken into custody on the instructions of the public prosecutor for the purposes of an investigation into the *prima facie* offence of bringing false accusations against the police officers.

24. During the questioning the applicant stated:

“After being summoned by you, I came to see you of my own accord. I acknowledge that I have taken note of the statement I made to the Le Lorrain police on 23 February 1989 [in connection with the second set of proceedings brought against the applicant] ... I did not agree with the statement ... and, not wishing to annoy the policemen, I signed the statement, but it was not my true signature. I should like to give an explanation of the events which led me to lodge a complaint with the public prosecutor against the Le Lorrain police officers.

... As I didn't want the officers to go to my house, I decided to leave the police station ... The police officer ... caught up with me on the road and told me to return to the police station. I followed the police officer, after putting up some resistance. Once we were in the police station courtyard, the officer caused me to fall to the ground so he could get me into the building. At that moment, two other officers came to his assistance. I wish to state that I was hit by the officers for no reason.

... While I was in custody ... I did receive a visit from a gentleman who was wearing ordinary clothes. He took my blood pressure and asked if everything was all right. I replied yes, but I didn't know that he was a doctor. I had not asked for a medical examination. If I had known he was a doctor, I would have told him that I had been beaten by the police officers. ...”

25. On the following day (1 March 1989) the applicant was again interviewed. The record of the interview includes the following passage:

“Question: Were you subjected to any violence by the police officers after the man came to take your blood pressure?

Reply: All the acts of violence I have reported were carried out before the man visited me. I was not beaten by the police officers after that and was not subjected to any other ill-treatment.

Question: Were the acts of violence you mention carried out while you were being arrested or afterwards?

Reply: All the blows were inflicted while the officers were restraining me ...”

26. After being released from custody, the applicant was interviewed by the Fort-de-France public prosecutor, to whom he repeated his statements.

27. On 1 March 1989, likewise, Dr Thomas, who had examined the applicant while he was in police custody, was interviewed by officers from the La Trinité police investigation unit. During the interview the doctor stated:

“It is correct that on 29 September 1988, in the afternoon ..., at the request of the Le Lorrain police, I examined [the applicant] ... According to the police officers, this person was very aggressive. I must stress that I was acting at the instance of the police. I arrived at the police station in ordinary clothes, without my white coat, carrying my bag. When I arrived, the police officers greeted me, saying 'Good afternoon, Dr Thomas' as they presented to me the person I was to examine, telling him that I was a doctor. He could not have failed to realise that I was a doctor.

I cannot remember whether the medical examination took place in front of the police officers. The patient appeared calm. I questioned him in creole, I think, asking if he was in any pain. He replied that he had nothing to report. I carried out a thorough medical examination of the patient: blood pressure, cardiovascular examination, auscultation of the lungs and a physical examination. I did not notice any marks – no signs of any blows, no haematomas nor anything else – during the examination. I cannot remember whether the patient called me 'Doctor'. I can state categorically that during the examination I did not observe any suspicious marks on the patient's body and the patient did not report anything to me. ...”

28. Also on 1 March 1989 it was decided that no further action should be taken on the applicant's complaint, on the ground that the information brought to the knowledge of the public prosecutor's office did not, as it stood, warrant the institution of criminal proceedings.

29. On 3 March 1989 the applicant lodged a further complaint with the senior investigating judge, alleging assault occasioning actual bodily harm and applying this time to join the proceedings as a civil party. The complaint referred by name to police officers Bavarin, Munier and Marchal.

30. In his complaint the applicant stated:

“On 29 September 1988 I was summoned to the Le Lorrain police station ... Since I had never sabotaged Vildeuil's bulldozers, let alone the one belonging to Mr Remir [who on 12 December 1988 had likewise lodged a complaint accusing the applicant of sabotage] ... I denied the charge to begin with. But after being subjected to serious violence, which was confirmed medically by Dr Kéclard, I admitted the facts even though they were untrue. The first policeman who questioned me told me, when I denied the charge, that my wife had already admitted that I was the one responsible for sabotaging ... Vildeuil's vehicle.

I therefore told the police officer that I was prepared to go and ask my wife for an explanation. That was when the officer prevented me from leaving and started hitting me. I protested against his unlawful violence, and it was then that two other police officers – the commanding officer and another officer – chained me up, as I said before, hit me and put me in the security cell. I was under duress, and because my shoulder and the small of my back were hurting, I was constrained to admit the offence ...

I wish to draw your attention [to the fact] that the doctor who came to see me at the instance of the police never told me he was a doctor; he did not examine me and just took my blood pressure with an apparatus. ...”

31. On 15 March 1989, having regard to the applicant's complaint against the police officers and pursuant to Article 687 of the Code of Criminal Procedure, the Fort-de-France public prosecutor applied to the Criminal Division of the Court of Cassation to designate the court to be responsible for the investigation or trial of the case.

32. On 14 April 1989 the applicant's lawyer filed further pleadings with the Court of Cassation.

33. In a judgment of 31 May 1989 the Court of Cassation dismissed the application, holding that as matters stood it was unnecessary to designate a court because, as the amount of sick-leave on grounds of total unfitness for work did not exceed eight days, the facts, assuming them to be made out, amounted to a minor offence (*contravention*) rather than a more serious one (*délit*).

34. On 15 June 1989 the applicant again lodged a civil-party application against the named police officers, alleging assault occasioning actual bodily harm, and on the same day he paid into court the sum of 5,000 French francs, set by the senior investigating judge.

35. On 13 September 1989 the public prosecutor's office applied for a judicial investigation in respect of the three police officers named in the applicant's complaint, and for an expert medical opinion to determine how long the applicant had been totally unfit for work.

36. On 15 September 1989 the investigating judge appointed a medical expert, Dr Cayol, to determine how long the applicant had been unfit for work.

37. In his report dated 29 September 1989 the medical expert concluded as follows:

“Having familiarised myself with Dr Kéclard's medical certificate and taken into account the information available from the questioning and the [medical] examination of 29 September [1988], I can accept that on 1 October 1988 [the applicant] presented a bruise on the right shoulder (after having fallen from an upright position) and pain when using his wrists and the lumbar region, problems which caused:

- (a) total physical incapacity for three days,
- (b) temporary total unfitness for work for nineteen days.

At present [the applicant] is, medically speaking, physically fit to carry on his usual activities without any changes.”

38. In submissions dated 5 January 1990 the public prosecutor sought to have the applicant's application to join the proceedings as a civil party declared inadmissible, on the ground that even if the facts of which the applicant had complained were established, they could only amount to the

minor offence of assault occasioning actual bodily harm and not to a more serious offence, and therefore could not be the subject of a civil-party application lodged under Article 85 of the Code of Criminal Procedure. Those submissions were accepted by the investigating judge, who declared the application inadmissible in an order of 10 January 1990.

39. On an appeal by the applicant, the Indictment Division of the Fort-de-France Court of Appeal upheld the investigating judge's order on 12 March 1990. On 13 March 1990 the applicant appealed on points of law and on 1 October 1990 he filed his full pleadings.

40. In a judgment of 22 January 1991, served on the applicant on 12 March 1991, the Criminal Division of the Court of Cassation quashed the judgment and remitted the case to the Indictment Division of the Basse-Terre Court of Appeal in Guadeloupe, for the following reasons:

“In holding as they did without providing a more adequate explanation, although it was also apparent from the expert medical opinion that the alleged acts of violence had caused the appellant to be unfit to resume work for nineteen days and although the appellant had maintained in his complaint that he had been chained up, the judges did not provide sufficient justification for their decision.

In merely ... upholding the impugned order, which declared inadmissible the complainant's application to join the proceedings as a civil party ..., the Indictment Division disregarded the import and scope of the principle [that civil actions and criminal proceedings are independent of each other].”

41. On 2 April 1991 the applicant filed his pleadings with the Indictment Division of the Basse-Terre Court of Appeal.

42. In a judgment of 16 May 1991 the Indictment Division delegated to its president the power to make directions for any further inquiries into the facts.

43. On 12 August 1991 the President of the Indictment Division directed that the court should inspect the scene of the events, and the visit was scheduled for 2 September 1991. Evidence was taken from the applicant on the same day. He stated:

“During the night I spent at the police station I was handcuffed to a wall and I remained standing against the wall all night. They had handcuffed both my hands, pulling me apart; to be more precise, each handcuff was attached to a chain. Being in that uncomfortable position caused, among other things, an injury to my left shoulder ...”

44. In an order of 2 October 1991 the President of the Indictment Division appointed a second expert, Dr Ensfielder, who on 27 December 1991 submitted a report in which he stated:

“The incident at the Le Lorrain police station on 29 September 1988 resulted in pain in the lumbar region and the wrists, and a bruise on the right shoulder (an X-ray did not reveal any bone fractures) which required medical treatment supplemented by physiotherapy to restore function. In view of the nature of those injuries and the treatment prescribed, the twenty days ordered by the attending physician can

reasonably be accepted as a period of total unfitness for work. The occupation of a heavy-plant driver makes considerable demands on the joints of the upper limbs, in particular the shoulder joint, and cannot be carried on unless that joint is functioning properly.”

45. The expert report was notified to the applicant on 18 March 1992.

46. On 24 June 1992 the President of the Indictment Division sent a letter of request to the President of the Metz Court of Appeal, seeking to have charges brought against police officer Marchal, who had in the meantime been transferred to the French mainland.

47. On 27 July 1992 police officers Munier and Bavarin were interviewed at their first examination by the investigating judge and were charged with assaulting the applicant. Mr Marchal was charged on 25 August 1992. On 20 October 1992 the President of the Indictment Division requested information from the commanding officer of the Martinique police (gendarmerie), who replied on 23 October.

48. On 10 November 1992 the President of the Indictment Division directed that the court should inspect the scene of the events.

49. On 7 December 1992 the applicant was examined by the investigating judge. The following is an extract from the record of the examination:

“I informed [the applicant] that, according to information I had obtained after Mr Marchal had been charged ..., Mr Marchal had not been in Martinique at the material time – that is to say, on 29 and 30 September 1988.

[The applicant]: I still wish to maintain my complaint against Mr Marchal ... but I don't know the names of the white policemen who hit me ... I knew police officer Bavarin, who is West Indian. I maintain that the three officers beat me.

It was Bavarin who threw me to the ground; I fell on my left shoulder and he climbed on top of me to immobilise me and called two policemen in shorts ...; it was after the doctor examined me, after the doctor came, that I was ill-treated: they fastened a chain to me and put it around my neck – or to be more precise, they fastened the chain to my arms and neck and left me in a corner of the room, in the police station; I was chained up like that all day and all night with nothing to eat; I maintain that I was ill-treated before and after the doctor came; I repeat that I fell on my left shoulder and had a pain in that shoulder which required fifteen days of massage; it was when the officers pressed themselves against me (before the doctor came) that they caused pain in my right shoulder. I maintain categorically that violence was inflicted on me before and after the doctor came.”

50. On 25 January 1993 the President of the Indictment Division held a confrontation between the applicant and police officers Munier and Bavarin. The following is an extract from the record of the confrontation:

“I pointed out [to the applicant] that, according to Mr Munier ..., he had not been at the Le Lorrain police station at the material time ...

[The applicant] replied: Police officer ... Munier, whom I recognise ..., was definitely at the police station ...; he was one of the three policemen who hit me. Mr Munier, who is here now, kicked me on the backside.

I pointed out [to the applicant] that this was the first time he had stated that he had been kicked on the backside. He replied: I maintain that Mr Munier did kick me on the backside.

I asked [the applicant] who had handcuffed him. He replied: It was Mr Bavarin who handcuffed me and put the chain around my neck. Mr Bavarin punched me all over.

I pointed out [to the applicant] that Dr Kéclard, who had examined him shortly after the events, had not mentioned any blows all over his body.

[The applicant] replied: I fell on my left shoulder and received the most blows on the left side of my head.

Mr Munier: I confirm the statements I made at my first examination on 27 July 1992. As to the statements which [the applicant] has just made, I can only say that they are untrue; I was not there. ...

Mr Bavarin: I confirm in their entirety the statements I made at my first examination on 27 July 1992. I repeat that I never hit [the applicant].

[The applicant]: When Mr Bavarin told me that my wife had said that I had put sand in the engine, I wanted to fetch my wife. When I went off to fetch her, Mr Bavarin held me in the street and punched me. He punched me on my side and all over.

I did not tell Dr Kéclard that I had been punched on the side; I mentioned my left shoulder, which hurt the most, and that was what I told the doctor.

I asked [the applicant] why Dr Kéclard had referred to his right shoulder in the medical certificate.

[The applicant] replied: I was hit on the left shoulder and I felt pain in my right shoulder ...”

51. On 8 March 1993 the President of the Indictment Division directed that the court should inspect the scene of the events.

52. On 26 March 1993 the President of the Indictment Division, in the presence of Dr Cayol and Dr Ensfielder, interviewed Dr Thomas. The following is an extract from the interview:

“*Question* ...: It appears from the medical certificate issued by Dr Kéclard that on 1 October 1988 ... [the applicant] presented with heavy bruising on the right anterior deltoid, with impaired mobility of the right shoulder; signs that both wrists had been bound, causing pain and reduced mobility; and, lastly, lumbar pain ... due to muscular contraction. Could the witness possibly have failed to observe [the applicant's] condition, in the absence of any complaint on his part, when he examined him at the Le Lorrain police station on the afternoon of 29 September 1988?

Reply: I questioned [the applicant] and examined him (inspection, auscultation, palpation and mobilisation). [The applicant] did not complain of anything and I did not notice anything abnormal on his body. But it is quite possible that [the applicant] experienced the classic phenomenon found in road accidents, where a person who does not complain of anything immediately after the accident or for the next few hours feels pain two or three days afterwards. It is not inconceivable that that is what happened to [the applicant].

I asked Dr Cayol for his opinion. He said: Where bruising results from muscle or ligament damage, the after-effects are frequently delayed for a period that varies according to the intensity of the traumatic impact and may be as long as two or three days, and the pain arising from inflammation is likewise delayed until that moment.

Dr Ensfelder: I agree entirely with the opinion of my colleague Dr Cayol. ... Where bruising results from muscle or ligament damage, mobility is not impaired immediately, contrary to what occurs with fractures or dislocations ...”

53. In additional submissions dated 25 May 1993 the Principal Public Prosecutor at the Basse-Terre Court of Appeal sought to have police officer Gaillard examined and to add to the file the papers in the proceedings brought against the applicant for forceful resistance to a public officer.

54. In a judgment of 17 June 1993 the Indictment Division ordered further inquiries into the facts.

55. After searching for the new address of police officer Gaillard, who had been transferred to the French mainland in 1989, the President of the Indictment Division of the Basse-Terre Court of Appeal sent a letter of request to his counterpart at the Douai Court of Appeal on 13 September 1993, seeking to have evidence taken from the police officer in question.

56. When examined on 21 October 1993 Mr Gaillard stated:

“At the material time I was the commanding officer of the Le Lorrain police in Martinique and was in charge of [police officers] ... Bavarin, ... Munier and ... Marchal. ...

On the very morning of the events – I was off duty that day – Mr Bavarin went to [the applicant's] home, where he met [the applicant's] wife. ...

In the early afternoon I heard shouting outside my window. I went to the window, where I saw a man, who must have been [the applicant], running away from the police station. Mr Bavarin was giving chase a few metres behind. I went down straight away to lend Mr Bavarin assistance. I was not in uniform. We restrained [the applicant] in the street ... By the time I arrived, Bavarin had already caught up with [the applicant] and the two of them were fighting, as [the applicant] was lashing out in all directions. We had to use force to restrain him and take him back to the station. Since we did not have any handcuffs, we propelled him along with his arms held behind his back; he later complained of pain in his shoulder. Proceedings were subsequently brought against him for forceful resistance to a public officer.

Once inside the police station, we let go of [the applicant], and once again he rolled about on the floor; we consequently had to restrain him again and we handcuffed him while he was still on the ground. While those events took place, only Mr Bavarin and I

were present ... [The applicant] subsequently calmed down. I personally asked Bavarin what had happened, and he told me that [the applicant] had run away on realising why he had been summoned to the police station. I went back home just as police officers Munier and Marchal were arriving.

Bavarin, who was in charge of the investigation, then questioned [the applicant], in the company of Marchal and Munier. In the afternoon I went down to the police station and was able to make sure that everything was proceeding normally and that no violence had been inflicted on the person of [the applicant] ...

I can attest that he was not subjected to any violence. The only violence, if you can call it that, occurred while [the applicant] was being arrested, and it was necessary in view of his state of extreme agitation ...”

57. On 2 December 1993 the Indictment Division ordered the file on the proceedings to be forwarded to the Principal Public Prosecutor, following the completion of the further inquiries. However, on 14 December 1993 the Principal Public Prosecutor's Office submitted that additional inquiries should be carried out. On 26 January 1994 the applicant filed pleadings with the Indictment Division.

58. In a judgment of 10 February 1994 the Indictment Division ordered further inquiries to be carried out with a view to establishing the dates on which Mr Marchal had travelled to the French mainland. On 11 April 1994 the President of the Indictment Division contacted Air France to that end; in a letter of 25 April 1994 Air France gave a negative reply.

59. On 9 May 1994 the accused, the applicant, the witness and their lawyers were summoned to attend a general confrontation on 12 September 1994.

60. On 12 September 1994 the President of the Indictment Division held a further confrontation between the applicant and police officers Munier, Marchal and Bavarin, during which Mr Gaillard also gave evidence as a witness. The record of the confrontation includes the following statements:

“Mr Gaillard: In my statement of 21 October 1993 I said that by the time I returned home, Mr Munier and Mr Marchal had arrived. Six years after the events ... it is quite possible that I made a mistake; all I know is that [Marchal] went to the mainland for six or seven days ...

[The applicant] stated: Police officer Marchal, who is here in front of me, was not in Le Lorrain on the two days in question. ... [The applicant] confirmed that Mr Munier, Mr Bavarin and Mr Gaillard had been present at the material time ...

Mr Bavarin: I confirm my previous statements: I did not hit [the applicant] at all, either while arresting him or afterwards. When we were rolling on the ground I tried as hard as possible not to hurt him. ... I can state that later on, when we were inside the police station, I did not hit him, tie a chain around him or ill-treat him in any way ...

In view of the fact that [the applicant] had tried to escape, I or another police officer handcuffed him while he was being questioned, but later, when we put him in the security cell, we took the handcuffs off. Whenever he was in the office, and even

during periods of rest, we kept the handcuffs on him, as there was a chance that he might run away. I can confirm that when I and a colleague, whose name I no longer remember, put [the applicant] in the security cell, we removed the restraints (the handcuffs) from him – I can't remember exactly whether it was my colleague or I who took the restraints off – so that he was not bound in any way; in fact, that is how I always proceed. I called the doctor because I thought that [the applicant] might have injured himself when he fell.

[The applicant]: [After the doctor left], I remained in the cell and Bavarin hung me up by the arms.

Question: What did he hang you on?

[The applicant]: It was dark, so I couldn't see. I stayed hanging up until the next day, [and] in the morning he let [me] go and took me to his office to confess the truth. He wrote a lot down and made me sign a lot of documents. I stayed inside without anything to eat.

Question [to Mr Bavarin]: Did you or did you not attach him to anything?

Mr Bavarin: I did not attach or suspend [the applicant] in any way; indeed, security cells are designed in such a way that you can't hang anything up, for the detainees' safety.

[The applicant]: When they put me in the security cell, there were three police officers, Bavarin, Munier and Gaillard, and I remained handcuffed in the cell. It was Bavarin who hung me up; Munier kicked me; and Gaillard was standing there and didn't do anything to me; ... I arrived at 2.30 p.m. and they put me in the security cell shortly afterwards. It was not until late in the evening that they hung me up in the cell; it was Bavarin who hung me up and I stayed like that all night.

Mr Bavarin: At no time did I hang [the applicant] up in the security cell in any manner whatsoever.

[The applicant]: I don't know what they attached me to; as I said, it was dark. When day broke it wasn't very light in the security cell. The cell was not lit up; I didn't see a lamp or a switch or anything. I was hung up by a chain with my arms apart. I can't tell you the size of the chain; there were handcuffs at both ends, but I didn't see how big the links in the chain were.

Question: How did Mr Bavarin manage to hang you up?

[The applicant]: He's the one who knows what it's like inside the cell; I don't know. ... Bavarin put the handcuffs on both my arms; he's the only one who knows how he hung me up.

Question [to Mr Gaillard]: How are security cells set out?

Mr Gaillard: There were two security cells in the police station at the time, and they were fully in conformity with the regulations; there were no hooks or bars inside them. As far as I recall, there were air vents of 8 mm or 10 mm, slightly broader than a cigarette. Our handcuffs are a standard design and cannot possibly be used to hold a

person's arms apart. I fail to see how we could have hung someone up in the security cell when we had been having trouble restraining him. I can state that when Mr Bavarin took [the applicant] into the security cell in the evening, I was not there. The light switch for the security cell is outside the cell; the light bulb is embedded in the thickness of the wall inside a block of reinforced glass.

Question [to Mr Bavarin]: How do you account for the marks which the doctor observed on [the applicant's] wrists?

Mr Bavarin: Very often when you put restraints on people, they leave marks on their wrists.”

61. In a judgment of 15 December 1994, delivered after the applicant had filed pleadings on 7 October and 23 November 1994, the Indictment Division held, in accordance with the Principal Public Prosecutor's submissions of 25 October 1994 and after reiterating the applicant's and the police officers' accounts and the medical findings, that there was no serious evidence against the officers in question.

62. It held:

“Whether the three persons placed under investigation should be committed for trial depends on the answers to the following questions:

1. Did any violence occur?

Caloc referred initially to a scuffle (29 September 1988 and 23 February 1989); he later referred to blows, without giving any further details ('I was hit', 'beaten' – 28 February 1989), and then to unspecified blows but also to being chained up all night (2 September 1991) and all afternoon (7 February 1992); lastly, besides that form of ill-treatment, he spoke of specific blows on his buttocks, his side, the left-hand side of his head and all over his body (25 January 1993).

Police officers Bavarin and Gaillard mentioned a scuffle, while the latter stated that Caloc had been taken back to the police station with both his arms held behind his back. They categorically denied that they had inflicted any blows or used a chain.

Caloc's statements, the acknowledgment by the two police officers that they used force and Dr Kéclard's medical certificate establish that some violence did occur.

2. What form did the violence take?

Caloc and the police officers disagreed on this point, but only from 28 February 1989 onwards. The noticeable escalation in Caloc's successive statements as regards the severity of the violence he suffered does not make his evidence persuasive, unless it can be corroborated by the certificate issued and the statements made by Dr Kéclard.

The only visible lesion observed by the doctor was a bruise on the right shoulder. It might have been the result of a blow, but it could also have been caused by a fall. No signs of any blows were observed in the regions mentioned by Caloc at a later stage. It has therefore not been established that he was 'hit' or 'beaten'.

The pain, scoliosis and marks indicating that both wrists had been bound may, however, be consistent with a fall, a scuffle and being chained up.

3. When did the violence occur?

According to the police officers, in the early afternoon, at about 2.15 p.m., when they had to use force to restrain Caloc, who was putting up resistance after running away.

According to the complainant, in the early afternoon, while he was offering resistance to the police officers – in any event, before Dr Thomas's visit (statements from September 1988 to March 1989) – or before and after the doctor's visit, including the following night (later statements).

What weight can be attached to the police officers' statement? Their version of the events is coherent, consistent in time and credible as a whole; their disagreement on two specific points does not affect the overall account. There remains the possibility that they concealed their knowledge of events that had occurred after they restrained Caloc.

What weight can be attached to Caloc's statements? The statements he gave at different times contain a fundamental contradiction, which naturally diminishes their credibility. When was he telling the truth?

According to the complainant, from March 1989 onwards, since the statements made before that date had been taken by police officers, including two of the officers under investigation. The statements had, he argued, been distorted by his fear of the police officers and his comprehension difficulties as no interpreter was present. Those obstacles had disappeared when [he] was able to speak to a judge with the assistance of an interpreter. Moreover, his later statements, which referred to violence being inflicted well beyond the early afternoon, were, in his submission, corroborated by two circumstances: firstly, no physical anomalies had been noted during Dr Thomas's visit, yet a number of lesions had subsequently been observed by Dr Kéclard; secondly, he had denied the offence on 29 September, yet a confession had suddenly been obtained the following day. Accordingly, he argued, something had happened between the first and second medical examinations and between the denials and the confessions.

However, that reasoning is not in any way consistent with the evidence.

Even leaving aside the initial record drawn up by Mr Bavarin, it is clear that in his statements of 23 February, which were made with the assistance of an interpreter, Caloc gave exactly the same version of the events. Admittedly, when he was interviewed again five days later by police officers, this time from the La Trinité force, he retracted those statements, maintaining that he had not wanted to 'annoy' the police officers, but on the very same day (28 February) he reiterated his account, stating clearly: 'All the acts of violence which I have reported were carried out before the man [Dr Thomas] visited me ... All the blows were inflicted while the officers were restraining me.' This third record, which was signed by Caloc in front of the officers from the La Trinité police, against whom there could not have been any suspicion of the acts of violence of which he complained, plainly corresponded finally to the truth in his eyes and cannot be erased by his subsequent statements. If any violence had

occurred while he was being questioned or 'chained up', he would not have failed to mention it on that occasion.

It should be noted that the allegation of a chain being tied around his neck and attached to the wall of the cell was not made spontaneously by Caloc. He did not refer to that incident until his first examination on 2 September 1991 by the President of the Indictment Division of the Basse-Terre Court of Appeal, although it had been mentioned much earlier in documents drawn up by his lawyer (the pleadings filed with the registry of the Court of Appeal on 1 March 1990, the day before the hearing in that court's Indictment Division). The allegation is, moreover, wholly incompatible with the standard official design of security cells, and Caloc was confused about the matter at the general confrontation on 12 September 1994.

The fact that Caloc did not complain of any pain to Dr Thomas but did to Dr Kéclard two days later does not necessarily mean that any violence occurred in the intervening period, since, as the three doctors interviewed on 26 March 1993 pointed out, pain is sometimes not felt until two to three days afterwards.

Nor were the confessions of 30 September necessarily the result of ill-treatment meted out the night before. Caloc was entirely at liberty to retract them shortly afterwards. Yet he did not do so until the hearing on 13 March 1989, having in the meantime confirmed them to other police officers and a member of the State legal service. There is therefore no proof at all that Adrien Caloc was ill-treated after the police officers' initial efforts to restrain him; only at that time was he subjected to any violence, the physical effects of which were noted by Dr Kéclard.

4. Who was responsible for the violence?

Certainly not Mr Marchal, who was nonetheless formally accused by Caloc before he withdrew his accusations at the last confrontation. It has been established that that officer was in mainland France at the material time. Nor was Mr Munier responsible, since he was not at the police station at the time of the initial events and only returned later, while Caloc was being questioned. The violence was indisputably perpetrated by Mr Bavarin and Mr Gaillard, who acknowledge that they used force. However, the complainant has lodged no complaint against the latter officer.

5. Was the violence unlawful?

In his first version Caloc acknowledged that he had 'run off' or left the police station 'in a hurry'. He admitted to having 'put up some resistance', 'gesticulating wildly' as the police officers sought to restrain him. In his second version he tried to deny that episode, but the observations made above on the respective weight to be attached to Caloc's two versions are also valid here.

The use of force to restrain Caloc while he was offering resistance to the police officers who were arresting him was perfectly legitimate. The violence inflicted on that occasion did not go beyond what is acceptable in such matters: it can be concluded from the medical findings that there was a scuffle and a fall, but that no blows were struck and no weapons were used. The marks that appeared on Caloc's wrists were those commonly left by handcuffs. The answer to the fifth question is therefore 'no'.

In conclusion, it appears after a thorough assessment of the case file that there is no serious evidence against the police officers concerned or against any other person.”

63. After the applicant had appealed on points of law on 19 December 1994 and filed full pleadings on 20 June 1995, the Criminal Division of the Court of Cassation upheld the Indictment Division's judgment on 6 March 1996, holding:

“The Indictment Division, referring to the expert medical opinions and the evidence and statements obtained during the police investigation and the judicial investigation, set out its reasons for holding that there was not sufficient evidence of intentional violence by anybody on the person of [the applicant].”

B. The criminal proceedings against the applicant

64. After being held in police custody from 29 to 30 September 1988, the applicant was charged with intentional damage to another person's property and forceful resistance to a public officer, and the file on Mr Vildeuil's complaint was forwarded to the public prosecutor's office.

65. Following a further complaint against him, lodged on 12 December 1988 by another heavy-plant owner, Mr Remir, the applicant was again taken into police custody by the Le Lorrain police, in the person of Mr Munier, on 23 February 1989 at 8.30 a.m. and was detained until 8 o'clock the following morning. He admitted the offence and gave statements about his initial period in police custody in September 1988 (see paragraph 20 above).

66. On 24 February 1989 the applicant appeared before the Fort-de-France Criminal Court in accordance with the direct-committal procedure, but asked for time to prepare his case. He was released under court supervision and was accordingly required to report to the Le Lorrain police station on 27 February and 16 March 1989. The hearing was adjourned until 13 March 1989.

67. At the hearing, according to the court record, there was a dispute between the public prosecutor and the defendant's lawyers when the public prosecutor refused to exclude a witness. The lawyers went to find the Chairman of the Bar, who demanded an apology from the public prosecutor for stating that he would not be told what to do by lawyers who knew nothing about procedure. When the public prosecutor refused to apologise and asked for it to be noted in the record that the lawyers had advised him to take another look at his copy of the Code of Criminal Procedure and had called him an incompetent bully, all the lawyers present left the courtroom, having had their request for an adjournment refused, and the hearing therefore continued without them. The police officers confirmed their statements, while the applicant argued that he had admitted the offence because he had been hit. In addition, evidence was heard from the doctors

(Dr Thomas had also given evidence during the police investigation on 1 March 1989).

68. In a judgment of 10 April 1989 the Fort-de-France Criminal Court found the applicant guilty of intentional damage to another person's property and forceful resistance to a public officer, and gave him a six-month suspended prison sentence.

69. Appeals against the judgment were lodged by the public prosecutor's office on 11 April, the complainant on 14 April and the applicant on 17 April 1989.

70. On 7 December 1989 the Criminal Appeals Division stayed the proceedings in respect of the charges of intentional damage and forceful resistance until a final decision had been given on the applicant's criminal complaint and civil-party application alleging assault during his time in police custody (see above).

71. In judgments of 5 April and 29 November 1990 the Criminal Appeals Division again stayed the proceedings for the same reasons.

72. According to the information in the file, the proceedings against the applicant have not since been resumed by the public prosecutor's office.

II. RELEVANT DOMESTIC LAW AND PRACTICE

73. Article 687 of the Code of Criminal Procedure (since repealed) provides:

“Where a senior law-enforcement officer [*officier de police judiciaire*] is likely to be charged with a criminal offence, allegedly committed in the area in which he performs his duties, whether or not in the course of those duties, ..., the public prosecutor dealing with the case shall without delay submit an application to the Criminal Division of the Court of Cassation, which shall proceed and determine the matter in accordance with the procedure for settling conflicts of jurisdiction and shall designate the court responsible for the investigation or trial of the case.”

74. It is clear from previous cases that the procedure laid down in Article 687, which was in force at the material time, must be set in motion without delay by the public prosecutor – regardless of whether the proceedings were instituted by the prosecution or by the complainant – as soon as the senior law-enforcement officer is accused and therefore likely to be charged. Otherwise, the investigating judge and, consequently, the Indictment Division have no jurisdiction (Criminal Division, 7 November 1973, *Bulletin criminel* no. 405; 22 June 1978, *ibid.*, no. 210; Full court, 31 May 1990, *ibid.*, no. 221).

In addition, a senior law-enforcement officer named in a complaint as the perpetrator of an offence must be regarded as likely to be charged within the meaning of Article 687; it is not necessary to find that there is sufficient evidence to warrant the charge.

Lastly, the procedure laid down in Article 687 must be set in motion by the public prosecutor, regardless of whether proceedings were instituted by means of direct committal or on a complaint lodged with a civil-party application (Criminal Division, 15 January 1968, D. 1969, 509, note by J.-M.R.).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

75. The applicant alleged a violation of Article 3 of the Convention, which provides:

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

A. Submissions of those appearing before the Court

76. The applicant submitted that he had been humiliated and ill-treated at the police station on 29 and 30 September 1988. He maintained that the record of his detention, drawn up by the police officers, was untruthful: it was when he had tried to get up to protest and fetch his wife, so that she could repeat her accusations in front of him, that the police officer had thrown him to the ground and hit him and a second officer, arriving shortly afterwards to lend assistance, had restrained the applicant by pinning his arms behind his back. He also argued that his confessions had been obtained by violent means. The force used had been excessive and unjustified; he pointed out that he was of medium build and weighed only 60 kg.

He maintained that, besides the violence inflicted on him as he was trying to run away, he had been handcuffed between 2.30 p.m. and 11.30 p.m. and had had to spend the night in the security cell with his neck and arms chained to a wall and his arms apart, and without anything to eat.

77. The applicant also complained of the attitude of the authorities which had dealt with the ordinary complaint he had lodged with the public prosecutor on 18 November 1988. He submitted that, instead of conducting a thorough investigation into the events that had prompted his complaint, the public prosecutor's office had proceeded to have him taken into police custody again on 23 February 1989, when he had been questioned by one of the Le Lorrain police officers whom he had accused of ill-treatment during his initial period in custody on 29 and 30 September 1988. He further stated that he had been placed in custody for a third time on 28 February and 1 March 1989, by officers from the La Trinité police, in connection with the

prima facie offence of bringing false accusations, and that the public prosecutor's office had decided on the same day to take no further action in respect of his complaint.

He also complained of the conduct of the prosecuting authorities, arguing that they had made every effort to play down the facts, in particular by disputing that they amounted to a serious offence; their attitude had led, initially, to his complaint and civil-party application being declared inadmissible.

Lastly, he stated that he had not been examined by an investigating judge about the events in issue until 1991, almost three years after they had occurred, by which time the case had been remitted, following a judgment by the Court of Cassation, from the local courts to the Indictment Division of the Basse-Terre Court of Appeal in Guadeloupe. He asserted that in French overseas *départements*, in particular Martinique, police officers from the mainland were rarely prosecuted, let alone punished, for ill-treating locally born citizens.

78. The Government considered, firstly, that, regard being had to the Court's case-law in the *Klaas* case (see the *Klaas v. Germany* judgment of 22 September 1993, Series A no. 269, p. 17, § 29 *in fine*), it was not for the Convention institutions "to substitute [their] own assessment of the facts for that of the domestic courts and, as a general rule, it [was] for these courts to assess the evidence before them ..." (see also the *Ribitsch v. Austria* judgment of 4 December 1995, Series A no. 336, p. 24, § 32).

79. In the instant case the Government considered that the various domestic courts that had examined the applicant's complaint and civil-party application had taken particular care in assessing the facts. In that connection, the Government pointed out that two expert medical opinions had been ordered during the investigation – the first, by Dr Cayol, having been submitted on 29 September 1989 and the second, by Dr Ensfelder, on 27 December 1991 – and that those two experts and Dr Thomas, who had examined the applicant during his time in police custody, had given evidence to the President of the Indictment Division on 26 March 1993. The Government also noted that in its judgment of 15 December 1994 the Indictment Division of the Basse-Terre Court of Appeal had taken into account the evidence given by Dr Kéclard (whom the applicant had gone to see on 1 October 1988 after being released from custody) at the Criminal Court hearing on 13 March 1989.

80. The Government further submitted that the judges of the Indictment Division of the Basse-Terre Court of Appeal had undertaken a point-by-point comparison of the applicant's and the police officers' versions of events, in the light of the medical findings submitted by Dr Thomas and Dr Kéclard. The Government noted that only after carrying out a particularly thorough investigation into the allegations against the three police officers accused by the applicant and after answering five separate

questions – as to whether there had been any violence, what form it had taken, when it had occurred, who had been responsible for it and whether it had been lawful – had the Indictment Division concluded on 15 December 1994 that there was no serious evidence against the police officers in question.

81. Lastly, the Government pointed out that the judgment of the Indictment Division had been reviewed by the Court of Cassation.

82. They added, however, that they were aware that it was incumbent on them to adduce evidence establishing facts that cast doubt on the victim's account, especially if that account was supported by medical evidence. In that connection, they again referred to the Indictment Division's judgment of 15 December 1994 and the various expert opinions and medical certificates.

83. In their submission, it followed from all those pieces of evidence that the injuries sustained by the applicant had been extremely slight and, above all, consistent with the hypothesis of an attempted escape during which the applicant had had to be restrained by two police officers. The Government were consequently of the view that the instant case was clearly distinguishable from the *Tomasi v. France* case (judgment of 27 August 1992, Series A no. 241-A, p. 40, § 109), in which the French Government had been unable to give any explanation as to the cause of the applicant's injuries.

B. The Court's assessment

84. The Court reiterates at the outset that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some instances, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see the *Tekin v. Turkey* judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, pp. 1517-18, §§ 52-53, and *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV).

The Court also points out that where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see the following judgments: *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Tomasi* cited above, pp. 40-41, §§ 108-11; and *Ribitsch* cited above, pp. 25-26, § 34).

85. The Court observes that in the instant case the ill-treatment complained of by the applicant was meted out while he was in police

custody from 2 p.m. on 29 September 1988 until 1 p.m. the following day. It is not disputed that the applicant attempted to run away from the police station and was forcibly returned.

86. The Court notes that the Government did not dispute that the police officers had used force against the applicant while he was in custody. However, it observes that the applicant's and the Government's accounts differ as to when and how frequently the violence occurred, since the applicant maintained that he had been subjected to ill-treatment not only when he attempted to run away from the police station but also throughout his time in custody. He stated that he had been kept on a chair with both arms held behind his back from 2.30 p.m. to 11.30 p.m. and that he had subsequently been taken to a security cell, where he had been chained up with his arms apart until 8 o'clock the following morning.

1. As to the alleged lack of an effective investigation

87. The substance of the applicant's allegations was that the relevant authorities had not carried out, at least initially, an effective investigation into his complaints of ill-treatment; that was disputed by the Government.

88. The Court has already held that procedural obligations may, in various contexts, be derived from the provisions of the Convention, where that is perceived as a necessary means of ensuring that the rights guaranteed under the Convention are not theoretical or illusory but practical and effective. For example, the obligation to conduct an effective investigation into a death caused by the State security forces has on that account been derived from Article 2 of the Convention, which guarantees the right to life (see the *McCann and Others v. the United Kingdom* judgment of 27 September 1995, Series A no. 324, pp. 47-49, §§ 157-64).

89. The Court considers that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation.

As with an investigation under Article 2, such an investigation should be capable of leading to the identification and punishment of those responsible (see, in relation to Article 2 of the Convention, the following judgments: *McCann and Others* cited above, p. 49, § 161; *Kaya v. Turkey*, 19 February 1998, *Reports* 1998-I, p. 324, § 86; and *Yaşa v. Turkey*, 2 September 1998, *Reports* 1998-VI, p. 2438, § 98). Otherwise, the general legal prohibition of torture and inhuman and degrading treatment or punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Labita* cited above, § 131).

90. Whether it is appropriate or necessary to find a procedural breach of Article 3 will therefore depend on the circumstances of the particular case.

91. In the case of *Assenov and Others v. Bulgaria* (judgment of 28 October 1998, *Reports* 1998-VIII, p. 3290, §§ 102-03) the Court made a finding of a procedural breach of Article 3 on account of the inadequacy of the investigation conducted by the authorities into the applicant's complaints that he had been severely ill-treated by the police. However, in that case the Court was unable to reach any conclusion as to whether the applicant's injuries had in fact been caused by the police as he had alleged. The inability to make any conclusive findings of fact in that regard derived at least in part from the failure of the authorities to react effectively to those complaints at the relevant time.

92. In the instant case, the Court observes that a police investigation was initiated by the public prosecutor's office on 30 November 1988, less than fifteen days after the applicant had lodged an ordinary criminal complaint. The doctors who had examined the applicant while he was in police custody and immediately after his release were interviewed on 28 February and 1 March 1989 respectively. The applicant himself was interviewed on 23 and 28 February and 1 March 1989.

The Court observes that, while it is regrettable that the authorities saw fit to take advantage of the applicant's detention in police custody to carry out those interviews, the first one (on 23 February) took place in the context of an investigation into a separate complaint against the applicant for damage to machinery and was conducted by an officer from the Le Lorrain police, Mr Munier, who had not been present when the applicant had attempted to escape during his time in police custody on 29 and 30 September 1988 (see paragraph 62 above, point 4). The Court also notes that the applicant's interview on 28 February and 1 March 1989 was conducted by police officers from a different force, the La Trinité gendarmerie, and that there is nothing in the record of the interview to suggest that he was unable to speak freely about the events that had prompted his complaint.

It cannot therefore be argued that, as regards the police investigation initiated following the applicant's complaint, the public prosecutor failed to conduct an effective investigation or was inactive or lacking in diligence (contrast *Selmouni* cited above, § 79). Lastly, it is not disputed that once the applicant's complaint and civil-party application had been remitted to it, the Indictment Division of the Basse-Terre Court of Appeal took numerous steps to establish the facts and did so with particular care.

2. As to the allegations of violence against the applicant during his attempted escape from the police station

93. The Court notes at the outset that the Government did not dispute the allegations of violence. It also notes that Dr Thomas, who was summoned on the police officers' initiative after the attempted escape, examined the

applicant towards the end of the afternoon of 29 September 1988 and did not observe any anomalies or signs of injuries or blows to his body. The applicant apparently even stated that he had nothing to report.

94. Admittedly, the medical certificate drawn up by Dr Kéclard on 1 October 1988, the day after the applicant was released from custody, refers to heavy bruising with impaired mobility of the right shoulder, signs that both wrists had been bound, and lumbar pain with temporary scoliosis due to muscular contraction. The certificate does not mention any other bruises, ecchymoses, abrasions or, in particular, any marks on the neck such as might be expected to be observed after a person has been chained up for a whole night.

95. The Court also observes that the expert report issued by Dr Cayol on 29 September 1989 states: "Having familiarised myself with Dr Kéclard's medical certificate and taken into account the information available from the questioning and the [medical] examination ... on 1 October 1988 [the applicant] presented a bruise on the right shoulder (after having fallen from an upright position) and pain when using his wrists and the lumbar region ..." Those findings were confirmed by the expert report submitted by Dr Ensfelder on 27 December 1991.

96. In addition, the Court notes that, according to the medical experts interviewed by the President of the Indictment Division on 26 March 1993, "where bruising results from muscle or ligament damage, the after-effects are frequently delayed for a period that varies according to the intensity of the traumatic impact and may be as long as two or three days, and the pain arising from inflammation is likewise delayed until that moment".

97. Consequently, the Court cannot discern any facts capable of casting doubt on the domestic courts' findings as regards the cause of the physical pain and after-effects described above; it may therefore be considered that those phenomena resulted from the violence used during the applicant's attempted escape (see the *Klaas* judgment cited above, p. 17, § 30, and, by way of contrast, the *Ribitsch* judgment cited above, pp. 25-26, § 34).

98. It is therefore the Court's task to determine whether the force used in the instant case was proportionate. In this connection, the Court attaches particular weight to the injuries sustained. The Court notes that on 1 October 1988 Dr Kéclard prescribed eight days' sick-leave and treatment consisting of X-rays and physiotherapy to restore function and that he subsequently extended the sick-leave until 20 October 1988. It further notes that in his expert report of 29 September 1989 Dr Cayol concluded that the problems experienced as a result of the police officers' intervention had caused "total physical incapacity for three days [and] temporary total unfitness for work for nineteen days". Lastly, it notes that on 27 December 1991 Dr Ensfelder concluded: "In view of the nature of [the] injuries and the treatment prescribed, the twenty days ordered by the attending physician can reasonably be accepted as a period of total unfitness for work. The

occupation of a heavy-plant driver makes considerable demands on the joints of the upper limbs, in particular the shoulder joint, and cannot be carried on unless that joint is functioning properly.”

99. The Court is of the opinion that, in view of the applicant's injuries, which mainly affected his right shoulder, it can be assumed that the decision to certify him unfit for work for a period of twenty days was necessitated by the specific nature of his occupation as a heavy-plant driver.

100. The Court points out that in the instant case the applicant did not deny having attempted to escape. In addition, it is apparent from the records of the interviews on 29 and 30 September 1988 that the applicant acknowledged that he had “resisted” and “jostled” the police officers while attempting to run away. It is also clear from the record of the applicant's interview on 28 February 1989 that he acknowledged “having put up some resistance” to the policemen who were attempting to restrain him. Furthermore, it is not apparent from the evidence given on 1 March 1989 by Dr Thomas, who examined him while he was in police custody, that the applicant had been beaten. Nor does the medical certificate drawn up by Dr Kéclard indicate that he observed any signs of blows to the applicant's body.

101. The Court consequently considers, like the Commission, that it has not been established that the force used during the incident was excessive or disproportionate.

There has accordingly been no violation of Article 3 of the Convention as regards the force used against the applicant during his attempted escape.

3. As to the allegations of ill-treatment by police officers after the applicant's attempted escape

102. The Court observes that the applicant maintained that he had been subjected to violence after the doctor's visit and, in particular, that he had been chained up in a security cell, with his arms apart, for a whole night. While the injuries sustained may well be consistent with the applicant's version of events, the Court notes that judgment was given against him by the national courts, which courts, in reaching the conclusion that the applicant had injured himself while resisting arrest during his attempt to escape and that he had not been subjected to any ill-treatment after that incident, had the benefit of hearing evidence from the applicant himself and various witnesses and of evaluating their credibility (see the Klaas judgment cited above, p. 17, § 30).

103. The Court notes, for example, that the Indictment Division of the Basse-Terre Court of Appeal held in its judgment of 15 December 1994 that “from March 1989, a significantly different version emerged from [the applicant's] statements” and that it expressed reservations as to the “weight” to be attached to the applicant's statements, seeing that they contained “a fundamental contradiction, which naturally diminish[ed] their credibility”.

104. Admittedly, the Court notes that in its judgment the Indictment Division, which examined the applicant's allegations with great care, accepted that “the pain, scoliosis and marks indicating that both wrists had been bound [might] be consistent with a fall, a scuffle and being chained up” and reiterated two arguments advanced by the applicant which, in his submission, corroborated his statement that he had been subjected to violence long after the start of the afternoon: “firstly, no physical anomalies had been noted during Dr Thomas's visit yet a number of lesions had subsequently been observed by Dr Kéclard; secondly, he had denied the offence on 29 September, yet a confession had suddenly been obtained the following day. Accordingly, he argued, something had happened between the first and second medical examinations and between the denials and the confessions”.

105. However, the Court notes that the Indictment Division of the Court of Appeal held that that reasoning was “not in any way consistent with the evidence”. It stated: “... the allegation of a chain being tied around his neck and attached to the wall of the cell was not made spontaneously by [the applicant]. He did not refer to that incident until his first examination on 2 September 1991 by the President of the Indictment Division of the Basse-Terre Court of Appeal... The allegation is, moreover, wholly incompatible with the standard official design of security cells, and [the applicant] was confused about the matter at the general confrontation on 12 September 1994. The fact that [the applicant] did not complain of any pain to Dr Thomas [at his medical examination while in police custody] but did to Dr Kéclard two days later does not necessarily mean that any violence occurred in the intervening period since, as the three doctors interviewed on 26 March 1993 pointed out, pain is sometimes not felt until two to three days afterwards. Nor were the confessions of 30 September necessarily the result of ill-treatment meted out the night before. [The applicant] was entirely at liberty to retract them shortly afterwards. Yet he did not do so until the hearing on 13 March 1989 [in the criminal proceedings against him], having in the meantime confirmed them to other police officers and a member of the State legal service. There is therefore no proof at all that [the applicant] was ill-treated after the police officers' initial efforts to restrain him; only at that time was he subjected to any violence ...”

106. Furthermore, with regard to the other allegations of violence against the applicant during his time in police custody – in particular, as set out in the record of the confrontation between the applicant and the officers from the Le Lorrain police on 25 January 1993, in which the applicant maintained that while in custody, he had been punched and “kicked on the backside” by police officer Munier, had fallen on his left side and had felt pain in his left shoulder – the Court notes that it is not apparent from the medical certificate issued by Dr Kéclard on 1 October 1988 that the applicant received any blows. It also notes that before the confrontation the

applicant had never complained of having been “kicked on the backside”. Lastly, the Court notes that the medical certificate issued by Dr Kéclard and the two expert medical opinions mention an injury to the right shoulder and not to the left shoulder.

107. The Court accordingly considers that during the proceedings before the Convention institutions no material has been adduced that could call into question the findings of the Indictment Division of the Basse-Terre Court of Appeal or add weight to the applicant's allegations before the Commission or the Court (see the Klaas judgment cited above, p. 17, §§ 29-30). It observes, in particular, that the applicant was unable to give a precise description of the security cell in which he had allegedly been chained up during the night.

108. The Court is accordingly of the opinion, as the Commission was, that the applicant's allegations concerning treatment to which he had been subjected after the first doctor's visit late in the afternoon of 29 September 1988 are not substantiated sufficiently precisely and sufficiently consistently for the Court to be able to hold that there has been a violation of Article 3.

109. There has consequently been no violation of Article 3 of the Convention in the instant case.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

110. The applicant complained of the excessive length of the proceedings in respect of the criminal complaint and civil-party application which he had lodged against the persons responsible for the ill-treatment to which, he alleged, he had been subjected while in police custody in September 1988. He relied on Article 6 § 1 of the Convention, the relevant parts of which provide:

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

A. The Government's preliminary objection

111. The Government reiterated before the Court the preliminary objection that they had already raised before the Commission, namely that the application was incompatible *ratione materiae* with the provisions of the Convention because the applicant had not filed a claim for damages in the criminal courts dealing with his application to join the proceedings as a civil party and because the judgment of 15 December 1994, in which it had been decided to take no action on the complaint for lack of sufficient evidence, had left open the possibility of future civil claims by the applicant.

The applicant disputed that argument.

112. The Court notes that this objection has already been examined by the Commission, which decided to dismiss it. The Court sees no reason to depart from the Commission's analysis and dismisses it likewise (see the *Miaillhe v. France* (no. 2) judgment of 26 September 1996, *Reports* 1996-IV, p. 1335, § 37, and *Maini v. France*, no. 31801/96, § 30, 26 October 1999, unreported).

B. Compliance with Article 6 § 1

113. In the applicant's submission, the length of the proceedings, which amounted to seven years and three days, did not satisfy the “reasonable time” requirement laid down in Article 6 § 1 of the Convention.

114. The Government contested that argument, while the Commission accepted it.

115. The Government pointed out that two expert medical opinions had had to be obtained in order to determine the exact period of total unfitness for work, that the judges in charge of the various stages of the investigation had had to travel from Basse-Terre in Guadeloupe to the scene of the events at Fort-de-France in Martinique, that, because the police officers accused by the applicant had been transferred elsewhere, it had been necessary to send letters of request before they could be interviewed or charged, and, lastly, that the geographical distance between the accused, the complainant and the witnesses had made it particularly difficult for the judges to arrange hearings and confrontations.

116. Lastly, the Government noted that in seven years of proceedings three judgments had been delivered by the Criminal Division of the Court of Cassation, one by the Indictment Division of the Fort-de-France Court of Appeal and nine by the Indictment Division of the Basse-Terre Court of Appeal.

117. The Court notes that the proceedings in issue began on 3 March 1989, when the applicant lodged a complaint and an application to join the proceedings as a civil party, and ended on 6 March 1996, when the Court of Cassation delivered its judgment. They therefore lasted seven years and three days.

118. The Court reiterates that the reasonableness of the length of proceedings is to be assessed with due regard to the following criteria: the complexity of the case, the conduct of the applicant and the conduct of the authorities dealing with the case (see, in particular, *Selmouni* cited above, § 112).

119. In the instant case the Court notes, as the Commission did, that the proceedings lasted more than seven years merely in respect of the investigation of the applicant's criminal complaint and civil-party application. It also notes that it took nearly two years before the President of the Indictment Division of the Basse-Terre Court of Appeal was instructed

to investigate the complaint, as the judicial authorities had previously considered – wrongly – that the facts of the case could not give rise to a civil-party application.

120. Lastly, the Court considers that special diligence was required of the relevant judicial authorities in investigating a complaint lodged by an individual alleging that he had been subjected to violence by police officers (see, *mutatis mutandis*, the *Doustaly v. France* judgment of 23 April 1998, *Reports* 1998-II, p. 859, § 48). Although the Indictment Division of the Basse-Terre Court of Appeal, in particular, carried out an especially thorough and meticulous investigation, the necessary diligence was not shown in the case as a whole.

121. The Court is consequently of the opinion that such a lengthy period cannot be considered reasonable within the meaning of Article 6 § 1.

122. There has therefore been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

123. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

124. The applicant sought compensation for pecuniary and professional damage sustained as a result of the detention in police custody complained of, but made no quantified claim. He also sought the sum of 350,000 French francs (FRF) for non-pecuniary damage.

125. The Government noted that, with regard to non-pecuniary damage, the applicant made no distinction between the amount he wished to be awarded in respect of a violation of Article 3 of the Convention and the amount resulting from a violation of Article 6. They considered that in any event the sum claimed was excessive.

126. The Court fails to see any causal link between the violation of Article 6 § 1 of the Convention and any pecuniary damage that the applicant might have sustained. The applicant's claims under this head should therefore be dismissed (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 73, ECHR 1999-II, and the *Demir and Others v. Turkey* judgment of 23 September 1998, *Reports* 1998-VI, p. 2660, § 63).

On the other hand, the Court considers that the applicant undoubtedly sustained non-pecuniary damage on account of the length of the proceedings

in issue. Having regard to the circumstances of the case and making its assessment on an equitable basis as required by Article 41, it awards him FRF 60,000 under this head.

B. Costs and expenses

127. The applicant, who was granted legal aid in connection with the proceedings before the Court, claimed the sum of FRF 150,000 in respect of the costs incurred both in the national courts and before the Court.

128. The Government observed that the applicant had not produced any documentary evidence of the costs and expenses incurred and that he had been granted legal aid before the Court. They considered that, on an equitable basis, an award of FRF 10,000 could be made.

129. Having regard to the fact that Mr Caloc, who was granted legal aid before the Court, did not produce any bill of costs, the Court dismisses his claim for costs and expenses (see *Labita* cited above, § 210). However, the applicant must have incurred some costs in being represented before the Court by a lawyer of the Fort-de-France Bar (for drafting memorials and attending the hearing); the Court considers it reasonable to award him under this head the sum of FRF 10,000 proposed by the Government, in addition to the amount already received in legal aid.

C. Default interest

130. 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 2.74% per annum.

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Government's preliminary objection;
2. *Holds* by six votes to one that there has been no violation of Article 3 of the Convention;
3. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* unanimously
 - (a) that the respondent State is to pay the applicant, within three months:

- (i) FRF 60,000 (sixty thousand French francs) in respect of non-pecuniary damage;
 - (ii) FRF 10,000 (ten thousand French francs) in respect of costs and expenses;
 - (b) that simple interest at an annual rate of 2.74% shall be payable from the expiry of the above-mentioned three months until settlement;
5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 20 July 2000.

S. DOLLÉ
Registrar

W. FUHRMANN
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mrs Greve is annexed to this judgment.

W.F.
S.D.

PARTLY DISSENTING OPINION OF JUDGE GREVE

In the present case I have found a violation of Article 3 of the Convention. Unlike the majority, I do not find that Mr Caloc can be held responsible for the medical problems which he had when released from detention.

Concerning Mr Caloc's health, the following evidence is available:

1. Mr Caloc was born in Martinique on 5 March 1954. He weighs some 63 kg. He is illiterate, speaks the local creole language and, with difficulty, some French. In 1988 he was a farmer and also ran a business. Previously he had worked as a heavy-plant driver. It is not alleged by the French Government that Mr Caloc suffered from any medical complaint *before* he was arrested at approximately 2.30 p.m. on 29 September 1988.

2. Some three hours after he was arrested, Mr Caloc – at the request of the French police – was examined by a duty doctor, Dr Thomas. After examining Mr Caloc, the doctor wrote a summary report in which he concluded that there was no medical reason why Mr Caloc should not be held in detention as he was not suffering from any complaints. The extract from Dr Thomas's report provided to this Court reads:

“... I the undersigned certify that I have today examined Adrien Caloc.

He complains of nothing.

His state of health is compatible with being held in police custody.”

The doctor's report does not indicate that there was any particular reason why he was called to examine Mr Caloc. *No* mention is made of force having been used to apprehend or arrest Mr Caloc. It is not stated in the report that any such use of force was the reason why the doctor was asked to examine Mr Caloc.

3. Mr Caloc was released from detention on 30 September 1988 and joined his family which, frightened by the situation, had sought refuge in another area. That very day Mr Caloc asked to be examined by the local duty doctor, complaining of ill-treatment by the police during his detention. The duty doctor, Dr Kéclard, examined Mr Caloc the next morning, on 1 October 1988, and gave him a medical certificate as to his findings of signs of violence. That examination was followed by X-ray examinations.

Later, Dr Kéclard was visited at his surgery by the police and questioned by them about his examination of Mr Caloc and the reasons for his having issued a medical certificate. By that time Mr Caloc had been accused of slandering the police on account of his complaint of ill-treatment during the detention and had, moreover, been redetained for this alleged offence. In this “slander” case a verdict of guilty was delivered very quickly, whereas the applicant's complaint of ill-treatment faced constant delays in the investigation and judicial follow-up. In respect of the latter, the applicant

was first interviewed by a judge more than three years after the “slander” case had been adjudicated, and long after at least one of the policemen allegedly responsible had been transferred back to the French mainland. That treatment of Mr Caloc is difficult to reconcile with the provisions in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – see, particularly, Articles 16 § 1, 12 and 13.

In the legal proceedings in the alleged ill-treatment case, a judge asked another doctor, Dr Cayol, to review Dr Kéclard's medical findings during his examination of Mr Caloc. Dr Cayol concluded:

“Having familiarised myself with Dr Kéclard's medical certificate and taken into account the information available from the questioning and the [medical] examination of 29 September [1988], I can accept that on 1 October 1988 [the applicant] presented a bruise on the right shoulder (after having fallen from an upright position) and pain when using his wrists and the lumbar region, problems which caused:

- (a) total physical incapacity for three days;
- (b) temporary total unfitness for work for nineteen days.

At present [the applicant] is, medically speaking, physically fit to carry on his usual activities without any changes.”

The Government did not dispute the medical findings of either Dr Kéclard or Dr Cayol.

It can thus be concluded that, when arrested by the police, Mr Caloc was not suffering from any medical complaint. He was furthermore given a clean bill of health by the doctor who ascertained that he was fit for detention some two and a half hours after he had been arrested and *after* he had been violently restrained from leaving the police station. When he left detention, however, Mr Caloc suffered from medical problems of such a serious nature that he was physically wholly incapacitated for three days and was unable to work for nineteen days.

Mr Caloc claimed that the police forced him to sit handcuffed on a chair – with his hands behind his back – for some nine hours without anything to eat or drink, and repeatedly hit him. Thereafter, he alleged, the police chained him to the wall in a dark cell. On release from detention, he immediately saw a duty doctor – who was not his own doctor – and complained of ill-treatment by the police.

This Court has repeatedly held that “where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention” (see, in particular, the following judgments: *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Ribitsch v. Austria*, 4 December 1995, Series A no. 336, pp. 25-26, § 34; and *Tomasi*

v. France, 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11). In other words, where he has injuries which were not there at the time of arrest, it is *not* for the applicant to substantiate his allegations of torture, inhuman or degrading treatment. The onus of proof shifts to the State to provide a “plausible explanation” of those injuries. The shift of the onus of proof is not taken into account by the majority in the present judgment.

Mr Caloc had no criminal record prior to the arrest and detention in issue. His case was a trivial one in which he was suspected of vandalism in the form of putting sand in the engines of two bulldozers owned by a private individual. The police had come to look for Mr Caloc at his home but, as he was not there, they had advised his wife that he was wanted at the police station. Mr Caloc therefore went to the police station himself. There, he was told by a policeman that his wife had told the police – some of whom were not fluent in the local creole language – that he was guilty of the suspected vandalism. Mr Caloc wanted to fetch his wife to the police station to have it clarified that this was a misunderstanding. When he made to go to find his wife, he was stopped by the police – the policeman in question was much bigger than Mr Caloc, weighing some 83 kg – and Mr Caloc fell to the ground.

Although external physical signs of violence may not immediately be visible, two crucial points have not, in my opinion, been proved and no plausible explanation was given for them by the Government.

Firstly, it has not been shown that the turmoil of the arrest, or rather the violence allegedly used when Mr Caloc was arrested, was at all significant and therefore to be recorded, let alone that it was capable of causing the medical complaints from which Mr Caloc suffered when he was released from detention. On the contrary, the doctor called upon by the police to ascertain whether Mr Caloc's health was compatible with detention less than two and a half hours *after* that violence, *does not mention any such violence* and states explicitly that *Mr Caloc complains of nothing*. Although some effects of violence may first become visible only hours after the bodily injury, it is unlikely that the physical impact would not be registered by the injured person himself to any degree worth mentioning under such circumstances.

Secondly, although a bruise later registered on Mr Caloc's right shoulder may not be incompatible with a fall in which the applicant hit the ground with his shoulder, there is no medical information to support a claim that the total physical incapacity for three days experienced by Mr Caloc after his release from detention and the additional unfitness for work for nineteen days were consequences of the turmoil at the time of the arrest. To say, as the Commission did, that the latter must have been due to the special requirements of Mr Caloc's work, is an assertion unsubstantiated by the facts of the case and therefore only speculation. On the other hand, Mr Caloc's own record of ill-treatment by the police – beatings included –

are more compatible with his state of health on being released from detention. The burden of proof rests on the Government, who have not proved their version of the events on a balance of probabilities.

It may be added, lastly, that the serious consequences of the physical harm to Mr Caloc after his encounter with the police, his interrogation and his detention, are such that the Government remain responsible also for the possible cumulative effects of the treatment to which the police subjected Mr Caloc. Was the violence used to apprehend Mr Caloc proportionate, considering that he was suspected of a trivial act, had come on his own initiative to the police station, had no previous criminal record and only wanted to leave the police station to get clarification of a possible misunderstanding in a context where some of the policemen were ignorant of the local language? Did the police act responsibly when they asked a doctor to ascertain whether Mr Caloc was fit to undergo detention, without emphasising the violence used when Mr Caloc had been arrested, when one bears in mind that this violence had, in their opinion, been of such a serious nature that the authorities later alleged that it was in itself the cause of Mr Caloc's three days of total incapacity and nineteen days of unfitness for work? According to Rule 24 of the Standard Minimum Rules for the Treatment of Prisoners, a medical officer must see and examine every prisoner with a view particularly to the taking of all necessary measures. A common-sense inference from the fact that Dr Thomas made *absolutely no reference* to this violence, the applicant's fall, etc., in his report does not lend any persuasive weight to later statements by the authorities (based on a statement of late January 1992 by one of the policemen involved) that this violence was the sole reason why the doctor was asked to see and examine the applicant. If that had been the case, it could also have been expected that it would have been recorded that the applicant complained of nothing despite the fall and the violence. Furthermore, would it not in itself amount to inhuman treatment if in those circumstances the police used the opinion of the medical expert, whom they had not informed of the earlier violence, to justify Mr Caloc's detention notwithstanding their own knowledge? And, lastly, the Government are, in my opinion, also responsible for the cumulative effect on Mr Caloc's health of the violence used for apprehending him, the shortcomings of the medical examination of the person arrested, leading to his being declared fit to undergo detention, and the detention under the actual circumstances. The general principle in international law, based on the general consensus of contemporary thought, is that whenever the lawful use of force and firearms is unavoidable, law-enforcement officials shall "exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved" (see Principle 5(a) of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials).

My concerns in the case are not allayed when the Government plead that Mr Caloc was detained in a completely bare security cell with no holes in the walls other than for ventilation (the diameter of those holes was only slightly larger than that of a cigarette), so that Mr Caloc could not have been shackled to the wall as he submitted to the Court. Detention under such circumstances may in itself amount to degrading if not also inhuman treatment. The lack of light in the cell contravenes Rule 11 of the Standard Minimum Rules for the Treatment of Prisoners. Why the applicant had to be handcuffed when he was detained in this kind of cell also merits some explanation. The information provided by the Government does not suffice to bring this treatment of the applicant into line with Rule 33 of the Standard Minimum Rules, on instruments of restraint. Moreover, it would have been easy for the Government to provide the Court with photographs of the detention facility used, and not leave the Court with almost nothing but general references to all detention facilities in Martinique having been inspected and found to meet standard requirements.

To conclude, I find a violation of Article 3 in the present case, seeing that Mr Caloc entered the police facilities with a clean bill of health and left with serious medical complaints for which the Government have failed to give a plausible explanation showing that they are not responsible. The treatment may be qualified as inhuman and degrading.