



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

SECOND SECTION

CASE OF LAUMONT v. FRANCE

(Application no. 43626/98)

JUDGMENT

STRASBOURG

8 November 2001

FINAL

08/02/2002

In the case of Laumont v. France,

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

Mr C.L. ROZAKIS, *President*,

Mr A.B. BAKA,

Mr J.-P. COSTA,

Mr G. BONELLO,

Mrs V. STRÁŽNICKÁ,

Mr P. LORENZEN,

Mr A. KOVLER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 31 August 2000 and 18 October 2001,

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

PROCEDURE

1. The case originated in an application (no. 43626/98) against the French Republic lodged with the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a French national, Mr Guy Laumont (“the applicant”), on 16 January 1997.

2. The applicant, who had been granted legal aid, was represented by Mrs A. Lequerre-Derbise, of the Val-de-Marne Bar. The French Government (“the Government”) were represented by their Agent, Mr R. Abraham, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. Relying on Article 5 §§ 1 and 4 of the Convention, the applicant complained, in particular, that he had been held in detention arbitrarily in that he had been kept in custody even though the order extending his detention had expired.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 31 August 2000 the Chamber declared the application partly admissible [*Note by the Registry*. The Court’s decision is obtainable from the Registry].

7. On 27 October 2000 the Government, but not the applicant, filed further written observations on the merits of the case (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 12 November 1994 four armed robbers wearing masks entered the premises of a transport company which employed a number of inmates from Poissy Prison who were in semi-detention or on external work assignments. After locking the entire staff in the lavatories, they forced the company manager, whom they had taken hostage, to open the safe, from which they stole 120,000 French francs (FRF) in cash before making off.

The investigators concentrated their inquiries on some of the prison inmates. One of them, G.D., had witnessed the offences and been threatened by the robbers.

9. On 13 January 1995 the managing director of the company had a cheque stolen. The home of one of the company's employees, E.M., was searched and a forged identity card bearing the applicant's photo was discovered, together with a sawn-off shotgun. The employee admitted that he had provided the applicant with information to help him commit the armed robbery in return for the sum of FRF 10,000. He also stated that he had recognised the applicant while the offence was being committed despite the mask he had been wearing and that the applicant was the robber who had been carrying the sawn-off shotgun.

10. On 19 January 1995 the investigating judge at the Versailles *tribunal de grande instance* decided to have the applicant detained pending trial and issued a warrant of commitment for armed robbery, false imprisonment, and wounding with intent and wilful violence resulting in total unfitness for work for less than eight days.

11. On 18 January 1996 the investigating judge made an order extending detention for four months from 19 January 1996.

12. The applicant's detention was twice extended for a further four months, on 14 May 1996 from 19 May onwards and on 13 September 1996 from 19 September onwards.

13. On 30 September 1996 the investigating judge substituted for the charge of false imprisonment with voluntary release (an intermediate offence (*délit*)) the more serious one of false imprisonment (*crime*) and made a partial discharge order. In accordance with Article 181 of the Code of Criminal Procedure, he ordered that the file be transferred to the public prosecutor's office at the Versailles Court of Appeal with a view to the

Indictment Division indicting the applicant and committing him for trial at the Assize Court. That order was served on the applicant on 3 October 1996.

14. In a judgment of 27 November 1996 the Indictment Division of the Versailles Court of Appeal ordered further investigations to be made and appointed for that purpose the investigating judge at the Versailles *tribunal de grande instance* who had previously been in charge of the investigation.

15. On 20 January 1997 the applicant requested that a bailiff be called on to record officially that his detention had become unlawful as the last order extending it, dated 13 September 1996 and effective from midnight on 19 September 1996 for a period of four months, had expired at midnight on 19 January 1997.

16. In a formal demand for information (*sommation interpellative*) addressed to the governor of Fresnes Prison the bailiff asked to be sent the detention order by virtue of which the applicant was still being held in his prison. In reply he was told that the applicant was being detained under the transfer order of 30 September 1996 and the Versailles Court of Appeal's judgment of 27 November 1996.

17. The applicant stated that he had lodged a complaint with the Créteil public prosecutor alleging arbitrary detention but had received no reply.

18. On 9 April 1997 the applicant made an application to the Indictment Division for his immediate release on the ground that he was being detained arbitrarily as the judge's initial warrant of commitment had ceased to have any effect on 19 January 1997.

19. In a judgment of 25 April 1997 the Indictment Division dismissed that application for the following reason:

"It is not disputed that the judgment of 27 November 1996 was delivered within the time laid down by the last paragraph of Article 214 of the Code of Criminal Procedure. Consequently, since the Indictment Division did not rule on the facts being investigated, the warrant of commitment issued by the investigating judge continued to have effect.

..."

20. In the same judgment the Indictment Division ordered that the applicant should be kept in custody to avoid all risk of pressure being brought to bear on witnesses or collusion and because he could not provide sufficient sureties that he would appear for trial.

21. The applicant appealed on points of law, relying on grounds of appeal based, firstly, on an infringement of Article 725 of the Code of Criminal Procedure and, secondly, on a breach of Articles 201 and 214 of the Code of Criminal Procedure and Article 5 of the Convention.

22. In a judgment of 19 August 1997 the Court of Cassation dismissed the appeal on the following grounds:

"It appears from the impugned judgment and the documents on the file that on 19 January 1995 a warrant of commitment was issued in respect of [the applicant],

who was under investigation for offences including armed robbery. On expiry of its validity a year later, the investigating judge extended the detention three times for four months, the final extension taking effect on 19 September 1996.

On 27 November 1996, following the investigating judge's transfer order of 30 September 1996, the Indictment Division ordered further investigations.

[The applicant] made an application to the Indictment Division for his release, alleging that the detention order had ceased to be valid on 19 January 1997 and that he had been unlawfully detained since that date; that application was refused in the judgment now appealed against.

In so ruling, the investigating court did not lay itself open to the objections raised. Since the judges ordered further investigations within the time allowed by Article 214, third paragraph, of the Code of Criminal Procedure, the initial warrant of commitment remained effective, in accordance with Article 181, second paragraph, of the Code, after the transfer order was issued and so remains until a decision on indictment is taken ..."

23. On 10 September 1997, after completion of the further investigations, the Indictment Division directed that the applicant be committed for trial at the Yvelines Assize Court charged with armed robbery, false imprisonment and other connected lesser offences. The judgment committing the applicant for trial at the Assize Court also contained an order for him to be remanded in custody. An appeal on points of law by the applicant against that judgment was dismissed by the Court of Cassation on 18 December 1997.

24. On 9 and 10 June 1998 the applicant was tried at the Versailles Assize Court, which sentenced him to ten years' imprisonment. In a judgment delivered on the same day on the civil claims the applicant was ordered to pay the civil party FRF 50,000 in damages.

25. In a judgment of 3 March 1999 the Court of Cassation dismissed appeals on points of law by the applicant against the Assize Court's judgments.

II. RELEVANT DOMESTIC LAW AND PRACTICE

26. The relevant provisions of the Code of Criminal Procedure, as worded before the passing of the Law of 15 June 2000 reinforcing the presumption of innocence and the rights of victims, provide as follows:

Article 122

"The investigating judge may issue ... a ... warrant of commitment ...

The warrant of commitment is the order given by an investigating judge to a prison governor to admit the person and take him into custody ..."

Article 135

“The investigating judge may issue a warrant of commitment only after examining the person concerned and if the penalty is imprisonment for an intermediate offence [*peine d’emprisonnement correctionnelle*] or for a more serious offence.

In cases involving serious offences [*matière criminelle*] or intermediate offences [*matière correctionnelle*], warrants of commitment may only be issued pursuant to the order provided for in Article 145 ...”

Article 145

“Whatever the classification of the offence, any decision to detain pending trial must be embodied in an order setting out the legal and factual reasons for the decision with reference solely to the provisions of Article 144.

The person concerned shall be informed orally of the order and be given a complete copy of it ...

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

In that case the investigating judge may, in an order that is reasoned with reference to the provisions of the preceding paragraph and against which no appeal shall lie, direct that the person be taken into custody for a fixed period, which may in no case exceed four working days.

Within that period he shall again have the person brought before him ... If he does not order detention of the person pending trial, the latter shall automatically be released ...”

Article 145-2

“In cases involving serious offences [*matière criminelle*] an accused cannot be held in detention for more than one year. However, subject to the provisions of Article 145-3, the investigating judge may, at the end of that period, decide to prolong detention for a period not exceeding six months by means of a decision made in accordance with the provisions of the first and fourth paragraphs of Article 145, his lawyer having been summoned in accordance with the provisions of the second paragraph of Article 114. That decision shall be renewable by means of the same procedure.

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

Article 148-1

“An application for release may ... be made by any accused for any reason and at any stage in the proceedings.

Where application is made to a court of trial or appeal, it shall be for the latter to grant conditional release; before committal for trial at the Assize Court, and in between Assize Court sessions, that power belongs to the Indictment Division ...”

Article 181

“If the investigating judge considers that the facts amount to an offence classified in law as a serious offence [*crime*], he shall order that the case file and a list of the exhibits be sent immediately by the public prosecutor to the Principal Public Prosecutor at the Court of Appeal with a view to proceeding as set out in the chapter on the Indictment Division.

Warrants for the arrest or commitment of an accused shall remain in force until the Indictment Division has given its ruling.”

Article 201

“The Indictment Division may in all cases, at the request of the Principal Public Prosecutor, of one of the parties or even of its own motion, order any additional investigative measure which it considers useful.

It may also in all cases order the release of the accused of its own motion after hearing the prosecutor.”

Article 214

“If the offences with which the accused are charged are classified in law as a serious offence [*crime*], the Indictment Division shall commit the accused for trial at the Assize Court.

It may also refer connected offences to that court.

The Indictment Division shall give its ruling within two months of the date of the transfer order, failing which the accused shall automatically be released.”

Article 724

“Persons ordered to be detained pending trial or sentenced to imprisonment shall be admitted to a prison.

A memorandum of imprisonment shall be drawn up for any person who is taken to a prison or reports to a prison of his own accord.”

Article 725

“Members of the prison service shall not, on pain of prosecution and punishment for arbitrary detention, admit or detain any person except in pursuance of a judgment imposing a prison sentence, an arrest and detention order made by the Indictment Division [*ordonnance de prise de corps*], a warrant of commitment or arrest [*mandat de dépôt ou d’arrêt*], a warrant for the suspect to be brought before the investigating

judge [*mandat d'amener*] wherever such a warrant is to be followed immediately by a period of interim detention, or an arrest order drawn up in accordance with the law, or without issuing the memorandum of imprisonment required by Article 724.”

27. The relevant case-law on some of the aforementioned Articles is as follows:

As to Article 201 of the Code of Criminal Procedure

“Since the second paragraph of Article 201 entitles the Indictment Division to order the release of the accused of its own motion regardless of the circumstances in which the matter was referred to it, the accused must be released if he is being held by virtue of a non-existent order. Such is the case when an order extending a period of pre-trial detention, although not appealed against, was issued out of time.”

(*Cass. Crim.*, 4 January 1983, *Dalloz* 1983, p. 562, note by Royer; *JCP* 1984. II. 20203, note by Chambon; *Bull. crim.* no. 3 [;and] *Cass. Crim.*, 10 May 1985: *Bull. crim.* no. 168)

As to Article 214 of the Code of Criminal Procedure

“By Article 214, third paragraph, the Indictment Division must give its ruling within two months of the date of the transfer order, failing which the accused must automatically be released. The requirements of that provision are satisfied by a judgment in which further investigations are ordered within that time-limit.”

(*Cass. Crim.*, 30 June 1981: *Bull. crim.* no. 221)

“In that case, it is not necessary to give any decision on pre-trial detention.”

(*Cass. Crim.*, 18 June 1985: *Bull. crim.* no. 232; *Cass. Crim.*, 17 July 1990: *Bull. crim.* no. 286)

“By Article 181, the initial detention order automatically remains in force from the point at which the order to transfer the case is made until the Indictment Division gives its decision ...”

(*Cass. Crim.*, 4 March 1992: *Bull. crim.* no. 62)

“Whenever the Indictment Division has ruled within the time laid down by Article 214, third paragraph, even if only for the purpose of ordering further investigations, the initial warrant of commitment remains in force until the accused is indicted as prescribed by Article 181, second paragraph.”

(*Cass. Crim.*, 10 February 1999: *Bull. crim.* no. 16)

THE LAW

ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

28. The applicant alleged a violation of Article 5 § 1 of the Convention, the relevant parts of which provide:

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

...

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

...”

A. Submissions of the parties

1. The applicant

29. The applicant complained that he had been detained arbitrarily from 19 January 1997 (the expiry date of the last order extending his detention pending trial, issued by the investigating judge on 13 September 1996 for four months from 19 September 1996) to 10 September 1997 (the date of the arrest-and-detention order issued by the Indictment Division as a consequence of his indictment).

During that time, the prison had kept him in custody by virtue of a mere notice (*avis à partie*) issued to the prison governor by the Versailles Principal Public Prosecutor. The applicant disputed that such a notice could constitute a valid detention order. He submitted that in the absence of any decision by the Indictment Division on his detention and as the warrant for his commitment had expired, he should have been released.

30. The applicant consequently criticised the Indictment Division for having failed to rule on his detention when it ordered further investigations. He emphasised the exceptional nature of pre-trial detention as set forth in Article 144 of the Code of Criminal Procedure, and pointed out that while the conditions for the length and renewal of such detention during the investigation stage were strictly circumscribed by Article 145-2 of that Code, the matter was governed by Article 181 of the Code of Criminal Procedure once the investigating judge had made the disposal order. The

applicant did not go so far as to deny that that provision was compatible with the Convention; he merely pointed out that the mandatory nature of the two-month period allowed to the Indictment Division to give judgment reflected the importance attached to the duration of the validity of warrants of commitment.

31. In the applicant's submission, Article 214 of the Code of Criminal Procedure applied only if the Indictment Division ruled on the question of indictment, which could not be the case where it made an order for further investigations. In considering that Article 181 of the Code of Criminal Procedure was applicable even when there had been no ruling on indictment, the Government were interpreting the provisions more harshly, and that was prohibited in criminal cases.

32. The applicant submitted that, on the contrary, warrants of commitment remained in force only for the two-month period within which the Indictment Division had to give its judgment. Since domestic law made no express provision in the event of further investigations being ordered, the provisions applicable to indictment decisions should not be unreasonably extended to cover it. Accordingly, the practice of effectively making pre-trial detention of unlimited duration when an order for further investigations had been made was to be regarded as being in breach of Article 5 § 1 of the Convention.

33. Thus, in view of the Indictment Division's failure to renew his detention order between 20 January 1997 (when the last order extending his detention expired) and 10 September 1997 (the date of the Indictment Division's decision to commit the applicant for trial at the Assize Court), the applicant submitted that he had been arbitrarily detained, for a period of about eight months.

34. The applicant submitted, moreover, that there was unequal treatment of persons detained in connection with the preliminary investigation (to whom the strict time-limits in Article 145-1 of the Code of Criminal Procedure were applied) and those detained for the purposes of further investigations (for whom detention was of unlimited duration and not subject to periodical review to check that it was justified).

35. The applicant further argued that Article 725 of the Code of Criminal Procedure contained an exhaustive list of detention orders, which alone could authorise imprisonment, and it did not include either orders to transfer files or judgments in which further investigations were ordered. Yet in the reply to the formal demand for information made by a bailiff at the applicant's request, it was stated that he was being detained "in accordance with a transfer order and a judgment of the Versailles Court of Appeal of 27 November 1996". In the applicant's submission, those were not legal instruments that authorised his continued detention under the aforementioned Article 725. That being so, there had been no statutory

provision for the practice in question, which had been judicially initiated by the French courts.

36. Lastly, the applicant drew the Court's attention to the fact that the prison authorities were responsible for keeping the prison register. Apart from arrest and detention orders issued by the Indictment Division, all detention orders were of limited duration, so that the prison service was able to review cases of arbitrary detention, for which it was answerable.

The applicant regretted that the indefinite duration of detention established by practice and legitimated by the courts made such review impossible. The applicant therefore submitted that there had been a violation of Article 5 § 1 of the Convention.

2. The Government

37. The Government contended that the applicant's continued detention could not be regarded as arbitrary as it was based on a valid warrant, issued in accordance with domestic law and satisfying the requirements of the Convention.

In that connection, they pointed out that the order to transfer the file to the Principal Public Prosecutor's Office had the effect of rendering *functus officio* the investigating judge who had made it, so that he no longer had jurisdiction to rule on pre-trial detention. If the accused was kept in detention thereafter, it was by virtue of the initial warrant of commitment, which, in accordance with Article 181 of the Code of Criminal Procedure, remained in force until the Indictment Division delivered its decision on whether to indict.

38. The continuation in force of the initial warrant of commitment was conditional on the diligence of the Indictment Division. If it failed to give a judgment within two months of the order to transfer the file, the prisoner had to be immediately released.

According to the Government, the Indictment Division had fully satisfied those requirements in the instant case as it had ordered further investigations within the time allowed and, under the Court of Cassation's case-law, such a decision amounted to a "ruling" within the meaning of Article 214, third paragraph, of the Code of Criminal Procedure.

39. In support of their argument, the Government cited a judgment of the Court of Cassation of 18 June 1985, which stated expressly: "Once the Indictment Division has ordered further investigations within the two-month time-limit laid down by Article 214, third paragraph, of the Code of Criminal Procedure, it does not have to make any ruling on whether pre-trial detention should continue, since the warrant of commitment issued earlier remains in force, under the provisions of the second paragraph of Article 181 of the Code of Criminal Procedure, until a decision on indictment has been taken."

In the Government's view, the Court of Cassation's argument was supported by a long line of earlier decisions, of both trial courts and appellate courts and of the Court of Cassation's Criminal Division. It is therefore unnecessary to renew an initial warrant of commitment, which is valid as a detention order from the point at which a transfer order is issued until the decision on indictment is taken, even when further investigations were ordered.

40. The Government submitted that the Court of Cassation, in its judgment of 19 August 1997 in the instant case had correctly applied its settled case-law. The applicant's detention could not therefore have constituted a violation of the Convention since, in accordance with the principles established by the Court of Cassation, domestic law had been complied with.

41. The Government also considered that the relevant domestic law was fully compatible with the Convention. The latter required that deprivation of liberty should be based on law. By that was meant a sufficiently accessible and precise rule, which did not have to be a law in the formal sense of that word. Thus a long and well-established line of case-law such as that of the Court of Cassation on the issue in the instant case fully satisfied the principles laid down in the Convention.

Furthermore, according to the Government, there was no disputing that it had been justified to keep the applicant in custody in view of the seriousness of the offence committed, the applicant's criminal record, the fact that he had been serving a semi-custodial prison sentence at the material time, the danger of his reoffending and the lack of sureties that the applicant would appear for trial.

42. In their further observations in the light of *Baranowski v. Poland* (no. 28358/95, ECHR 2000-III) the Government submitted that the applicant's situation in that case was radically different and that the Court's reasoning in that judgment could not be applied to the substantive legal question raised in the instant case.

In the instant case the applicant's continued detention was not at all the result, as in *Baranowski*, of a judicial practice established in the absence of any specific legislative provisions but was based on statutory provisions (Article 181, second paragraph, and Article 214, third paragraph, of the Code of Criminal Procedure), the manner of whose implementation had been clarified in long-standing, settled case-law that was well known. The Court of Cassation and the lower courts had only interpreted and applied the statutory provisions, as was their function.

The Government also pointed out, on the one hand, that detention was limited in time and, on the other, that persons in detention could apply for release at any time if they considered that their detention was arbitrary.

Lastly, the Government emphasised that the warrant of commitment had been issued by an investigating judge in the exercise of judicial powers.

That was another respect in which the present case was not comparable to *Baranowski*, in which the indictment on which the detention was based had been issued by a public prosecutor, who had no judicial powers.

B. The Court's assessment

43. The Court reiterates that the terms “lawful” and “in accordance with a procedure prescribed by law” used in Article 5 § 1 of the Convention essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. The Convention requires in addition that any deprivation of liberty should be in conformity with the purpose of Article 5, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see, among many other authorities, *Erkalo v. the Netherlands*, judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2477, § 52).

44. Furthermore, it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with. A period of detention will in principle be lawful if it is carried out pursuant to a court order (see *Douiyeb v. the Netherlands* [GC], no. 31464/96, §§ 44-45, 4 August 1999, unreported).

45. In that connection, the Court would emphasise that, given the importance of personal liberty, it is essential that the applicable national law should meet the standard of “lawfulness” set by the Convention, which requires that all law, whether written or unwritten, be sufficiently precise to allow the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Steel and Others v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2735, § 54).

46. In the instant case the Court must therefore examine whether the applicant's detention during the period in question, namely from 27 November 1996 (the date of the judgment whereby further investigations were ordered) or 19 January 1997 (the expiry date of the investigating judge's last order to extend the applicant's pre-trial detention) to 10 September 1997 (the date of the arrest and detention order issued by the Indictment Division as a consequence of its decision to indict the applicant), was “in accordance with a procedure prescribed by law” and “lawful” within the meaning of Article 5 § 1 of the Convention.

47. The parties disagreed over whether there had been a valid detention order justifying the applicant's continued detention for the aforementioned period, by which time the Indictment Division had jurisdiction in the case.

48. Firstly, the Court notes that the second paragraph of Article 181 of the Code of Criminal Procedure lays down a general rule that warrants for the arrest or commitment of persons under investigation remain in force until the Indictment Division has given its ruling. It also notes that the fact that an initial warrant of commitment issued by the investigating judge remains in force where the case file has been transferred to the Indictment Division does not mean that pre-trial detention becomes unlimited in duration. Article 214, second paragraph, of the Code of Criminal Procedure, which is a clear statutory provision with foreseeable effect, sets a time-limit on pre-trial detention extended in this manner, since it provides that persons detained pending trial shall automatically be released if the Indictment Division has not ruled within two months of the transfer order.

49. In the instant case it is true that the Indictment Division gave a ruling within the two-month period set by Article 214, second paragraph, but did so only to order further investigations, not to decide whether to indict the applicant.

50. However, it is apparent from the case-law of the Court of Cassation that a judgment in which further investigations are ordered satisfies the requirement of Article 214, third paragraph. It is also apparent from this case-law that “once the Indictment Division has ordered further investigations within the two-month time-limit laid down by Article 214, third paragraph, of the Code of Criminal Procedure, it does not have to make any ruling on whether pre-trial detention should continue, since the warrant of commitment issued earlier remains in force, under the provisions of the second paragraph of Article 181 of the Code of Criminal Procedure, until a decision on indictment has been taken ...”.

51. That case-law is of long standing and is well-established (see, for instance, the judgments cited in paragraph 27 above); it is based on the interpretation of two statutory provisions, namely Article 181, second paragraph, and Article 214, third paragraph, of the Code of Criminal Procedure. This clearly distinguishes the instant case from *Baranowski*, in which it was emphasised that persons were kept in detention solely as the result of a practice based neither on a statutory provision nor on any specific case-law (see *Baranowski*, cited above, § 54).

52. Furthermore, in the instant case the applicant was assisted by a lawyer, who, as a professional, could not have been unaware of the relevant case-law.

53. Lastly, while that case-law makes it unnecessary for the Indictment Division to make a fresh decision as to whether the defendant should be kept in custody, it does not deprive the latter of the possibility of obtaining such a decision at any time in the proceedings by applying for release under Article 148-1 of the Code of Criminal Procedure.

54. In the Court’s view, the case-law is therefore not unreasonable or arbitrary.

55. In the light of the foregoing, the Court finds that the applicant's continued detention after 19 January 1997 not only was in conformity with domestic law but also satisfied the requirements of Article 5 § 1 of the Convention.

56. Accordingly, there has been no violation of that provision.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 5 § 1 of the Convention.

Done in French, and notified in writing on 8 November 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President