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

**CASE OF I.A. v. FRANCE**

**(1/1998/904/1116)**

JUDGMENT

STRASBOURG

23 September 1998

**In the case of I.A. v. France**[1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr L.-E. PETTITI,
Mr R. MACDONALD,
Mr J. DE MEYER,
Mr R. PEKKANEN,
Mr A.N. LOIZOU,
Mr J.M. MORENILLA,
Mr A.B. BAKA,
Mr E. LEVITS,

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

Having deliberated in private on 26 June and 27 August 1998,

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

## PROCEDURE

1. The case was referred to the Court by the French Government ("the Government") on 26 December 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 28213/95) against the French Republic lodged with the European Commission of Human Rights ("the Commission") under Article 25 by a French national, Mr I.A., on 29 March 1993. The applicant asked the Court not to reveal his identity.

The Government's application referred to Article 48 of the Convention. The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 5 § 3 of the Convention.

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*Notes by the Registrar*

1. The case is numbered 1/1998/904/1116. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated as the lawyer who would represent him Mr T. Fillion, of the Rennes Bar (Rule 30).

3. The Chamber to be constituted included *ex officio* Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 31 January 1998, in the presence of the Registrar, the Vice-President of the Court, Mr R. Bernhardt, drew by lot the names of the other seven members, namely Mr R. Macdonald, Mr J. De Meyer, Mr R. Pekkanen, Mr A.N. Loizou, Mr J.M. Morenilla, Mr A.B. Baka and Mr E. Levits (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr Ryssdal, who died on 18 February 1998, was replaced as President of the Chamber by Mr Bernhardt (Rule 21 § 6, second sub-paragraph).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, had consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's and the Government's memorials on 20 and 25 May 1998 respectively. On 2 June 1998 the Secretary to the Commission indicated that the Delegate would submit his observations at the hearing.

5. By a letter of 19 June 1998 Mr Fillion informed Mr Bernhardt that he would be replaced at the hearing by Ms M. Gassner-Hemmerlé of the Strasbourg Bar.

6. In accordance with Mr Ryssdal's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 23 June 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*
Mr B. NEDELEC, *magistrat*, on secondment to the Legal Affairs Department, Ministry of Foreign Affairs, *Agent*,
Mr BRUDY, Advocate-General at the Angers Court of Appeal,
Mr DALLES, *magistrat*, on secondment to the Department of Criminal Cases and Pardons, Ministry of Justice,
Mrs DABEL CLERIN, Principal attachée, European and International Affairs Service, Ministry of Justice, *Advisers*;

(b) *for the Commission*
Mr J.-C. SOYER, *Delegate*;

(c) *for the applicant*
Ms M. GASSNER-HEMMERLÉ, of the Strasbourg Bar, *Counsel*.

The Court heard addresses by Mr Soyer, Ms Gassner-Hemmerlé and Mr Nedelec.

# AS TO THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

7. The applicant, who was born in Beirut (Lebanon) in 1958, is at present detained in Rennes Prison (Ille-et-Vilaine). In December 1990 he travelled to Lebanon, where he married a young Lebanese woman, who became his second wife.

### A. Background to the case

8. On 21 June 1991 the body of a young woman was retrieved from the harbour mouth at Les Sables d'Olonne (Vendée). She had been gagged, her teeth had been broken and she had head wounds. The body bore the marks of strangulation, had burns on the chest and thighs and had been weighted down with a weight of about twenty kilograms. A post-mortem carried out the same day by Drs Nadau and Rocard revealed, *inter alia*, that the cause of death had been asphyxia and that the victim had received a blow to the head before she died.

9. On 25 June 1991 a murder inquiry was opened and the investigating judge ordered an expert report on the body. The report, by a Professor Rudler, was filed on 29 October 1991.

10. Having been unable to identify the body, the investigators circulated this information through Interpol. On 5 November 1991 the Interpol office in Beirut informed them that the applicant's wife's parents, who were worried because they had had no recent news of their daughter, had reported her disappearance to the Lebanese authorities.

It was subsequently discovered that, by letters of 21 August 1991, the applicant had reported his wife's disappearance to the municipal services of Nuaille (Maine-et-Loire) and the Vezins gendarmerie. When he was interviewed on 14 September 1991 by gendarmes belonging to that brigade he had stated that his wife had left him on 18 June 1991 to join her brother in Switzerland, taking with her some money and objects of value that she had stolen from him. On 4 October 1991 he had also filed a missing person report with the prefectoral authorities.

11. Tests carried out on the body identified the victim as the applicant's wife.

12. The applicant was taken into police custody on 4 December 1991. When interviewed by the police conducting the inquiry he first asserted that on 18 June 1991 he had dropped his wife off at Angers station, where she had caught a train to Paris before travelling to Switzerland.

He subsequently made, in substance, the following statement: on 19 June 1991, after a domestic quarrel, the applicant's wife had attempted to take her own life by swallowing medicines and then dousing herself with household bleach, after which she had hanged herself with a clothes line; fearing the reactions of his wife's family, Mr I.A. had cut down her body, pushed her tongue back into her mouth with a piece of cloth, wrapped the body in a sheet and blanket, tied and weighted it and then placed it in the boot of his car before driving to Les Sables d'Olonne, where, next day, after waiting for nightfall, he had thrown it into the sea.

As the investigation proceeded, it revealed the inconsistencies of this version of events. For example, the applicant's wife had not doused herself with bleach nor had she swallowed medicines; she had not been hanged but strangled; and it was before she died that the piece of cloth had been placed in her mouth and the burns found on her body and the injuries to her teeth had been caused.

## B. The judicial investigation

### *1. The course of the investigation during 1991*

13. On 6 December 1991 the Sables d'Olonne investigating judge charged Mr I.A. with murder and made a provisional order for his

imprisonment, committing him to prison for three days. On 9 December 1991 the judge made an order for his detention on remand worded as follows:

"…

Whereas the constraints of judicial supervision are inadequate with regard to the functions set out in Article 137 of the Code of Criminal Procedure;

Whereas the accused's detention on remand is necessary

to preserve public order from the disturbance caused by the offence,

to protect the accused,

and to ensure that the accused remains at the disposal of the judicial authorities,

in that, as the case concerns a serious crime, and in the light of what the investigations conducted hitherto have revealed, public order has been disturbed, in particular by the circumstances of the discovery of the body;

in that the accused belongs to a Lebanese community, so that he must be protected from the risk of revenge attacks by the victim's family;

and in that there is a need to ensure that he remains at the disposal of the judicial authorities, as he may abscond to the Middle East at any time."

14. On 10 December 1991 the investigating judge appointed a Professor Pannier and a Dr Bureau to produce an expert report on the lesions found on the victim's body (their report was filed on 3 June 1992).

On the same day, and again on 16 December 1991, the judge interviewed one of the applicant's cousins, who had come to see him of his own accord.

15. On 19 December 1991 the investigating judge appointed a Professor Doutremepuich to produce an expert report on vaginal and anal swabs taken from the victim.

16. On 20 December 1991 the investigating judge held a reconstruction of the crime, which was attended, among others, by the doctor who had performed the post-mortem, who was appointed expert with the special task of verifying the compatibility of the versions of events given by the accused with the results of the post-mortem (his report was filed on 10 January 1992).

On the same day the investigating judge questioned Mr I.A.

17. From 20 December 1991 to 12 February 1992, acting on instructions received on 18 December 1991, the Angers Regional Criminal Investigation Department (*SRPJ*) monitored the telephone line of a Mr V. and a Miss B., two of the applicant's acquaintances.

*2. The course of the investigation in 1992*

18. On 7 January 1992 the investigating judge appointed Professor Doutremepuich to examine the rag that had been used to gag the applicant's wife. On 8 January he appointed two psychologists, a Mrs Griffon and a Mr Troadec, to produce medico-psychological reports on the applicant and a Dr Pennec to produce a psychiatric report (the reports of the first two experts mentioned were filed on 2 April 1992, that of the third expert on 8 April 1992).

19. On 16 January 1992, acting on instructions received on 6 December 1991, a detective from the Angers *SRPJ* interviewed the applicant's first wife.

20. The investigating judge took evidence from Mr I.A.'s cousin as a civil party on 29 January 1992. On 12 February he took evidence from the victim's brother and sister-in-law – they had previously been interviewed on 5 February by the Angers *SRPJ*, acting on instructions of 20 December 1991; on 14 February and 6 March 1992 he confronted them with the applicant.

21. On 18 March 1992, acting on instructions of 6 March, the Angers *SRPJ* took a sample of hair from the body.

22. On 18 and 20 March 1992, acting on instructions of 20 December 1991, the Angers *SRPJ* took statements from Mr V. and Miss B., and from a woman with whom Mr I.A. had been carrying on a sexual relationship before his arrest. The latter declared in particular that the applicant had informed her of his intention of leaving France for Australia as soon as his house was sold.

23. On 31 March 1992 the investigating judge visited the scene of the crime.

On 15 April 1992 he again interviewed the applicant's cousin.

On 30 April 1992 he took a statement from the applicant's ex-wife.

24. On 21 May 1992 the investigating judge confronted the applicant's cousin with Mr V. and Miss B., then interviewed Mr I.A., asking him in particular whether he wanted any special expert examinations of the victim's body to be made. On the basis of instructions given the same day, Mr V. and Miss B. were again interviewed by the Angers *SRPJ*.

On 26 May the investigating judge held a confrontation with the victim's brother and sister-in-law.

25. On 29 May 1992 the judge refused an application for release lodged by Mr I.A. in an order worded as follows:

> "…
>
> Whereas the accused's detention on remand is necessary
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> to preserve public order from the disturbance caused by the offence,

to protect the accused,

and to ensure that the accused remains at the disposal of the judicial authorities,

in that the offence gravely disturbed public order, being a serious crime; in that further inquiries are necessary; and in that it is necessary to ensure that the accused remains at the disposal of the judicial authorities on account of the fact that, being a Lebanese national, he is likely to flee the jurisdiction, a step which it seems he considered taking shortly before his arrest."

On appeal by the applicant, the Indictment Division of the Poitiers Court of Appeal upheld the above order in a judgment of 16 June 1992, on the following grounds:

"Having regard to the penalty to which the accused would be liable if found guilty and the fact that he has family ties in Lebanon, it is to be feared that he might seek to evade justice by absconding to that country. It is obviously necessary to continue his detention to prevent him from doing so."

26. On 10 June 1992 the investigating judge held a confrontation between the applicant and the three people he had interviewed on 21 May.

27. On the basis of instructions given on 17 June 1992, a witness was interviewed by the Angers *SRPJ*.

28. On 10 July 1992 the investigating judge confronted Mr I.A.'s cousin with his ex-wife.

29. On 14 September 1992 the investigating judge refused an application for release lodged by Mr I.A. on 9 September in an order worded as follows:

"Whereas the accused's detention on remand is the only way

to preserve the evidence,

and to prevent pressure being brought to bear on witnesses or the victim,

in that the accused has shown particular duplicity in the organisation of his lies; in that he has colluded with third parties (ex-wife and friend); and in that new evidence has turned up during the investigation (discovery of allegedly stolen jewellery);

Whereas the accused's detention on remand is necessary

to preserve public order from the disturbance caused by the offence,

to protect the accused,

and to ensure that he remains at the disposal of the judicial authorities,

in that public order has been disturbed in the extreme on account of the international, family implications to which the accused himself refers in his application; and in that the accused himself admits to living in fear 'of our frequently barbaric and unjust customs', his continued detention is the only way to ensure his protection and to avoid all risk of his absconding in the event of his release."

30. On 16 October 1992 the accused was served with a copy of the expert report of Professor Pannier and Dr Bureau and was informed that he had fifteen days to submit observations or request an additional expert report or second opinion; he was then interviewed by the investigating judge.

He was again questioned by the investigating judge on 28 October 1992.

31. By an order of 29 October 1992 the investigating judge appointed an expert to carry out "an inquiry into the accused's personality, his financial circumstances, and his family and social background, and to provide any kind of information about his pattern of behaviour". The report was filed on 14 January 1993.

32. By an order of 17 November 1992, which reproduced the wording of the order of 14 September 1992, the investigating judge refused an application for release lodged by the applicant.

33. On 25 November 1992 the investigating judge interviewed the applicant's cousin.

34. On 4 December 1992 the judge extended for one year the applicant's detention on remand, by means of the following order:

"Whereas the accused's detention on remand is the only way to prevent collusion between him and his accomplices,

in that the circumstances of the victim's death and the barbaric acts which she suffered remain obscure; in that it is necessary to try to ascertain the accused's motives, in case this was not just a simple private problem but formed part of a much more general context with Lebanese links; and in that it is therefore possible that the accused did not act alone;

Whereas the accused's detention on remand is necessary

to preserve public order from the disturbance caused by the offence,

to protect the accused,

and to ensure that he remains at the disposal of the judicial authorities,

in that the case file shows that there is a very serious risk of reprisals; in that the very special circumstances of the victim's death (barbarity) have been partly responsible for a lasting disturbance of public opinion; and in that it is necessary, in view of the penalty to which the accused is liable, and his foreign origin, to ensure that he remains at the disposal of the judicial authorities."

35. On 8 December 1992 the investigating judge visited the scene of the crime.

*3. The course of the investigation in 1993*

36. On 13 January 1993 the investigating judge refused another application for release from the applicant, by an order drafted in the same terms as the order of 4 December 1992 (the only major difference being that it omitted to mention that detention was necessary for the protection of the accused). He also refused, on 5 March 1993, an application submitted on 2 March, on the ground that detention was the only way to prevent pressure being brought to bear on witnesses and was necessary to preserve public order from the disturbance caused by the offence, to protect the accused and to ensure that he remained at the disposal of the judicial authorities.

37. On 16 March 1993 the investigating judge asked a Dr Lavault to produce an additional expert report to verify whether the burns found on the victim's body had been caused before death.

On 24 March 1993 he served Mr I.A. with the conclusions of the expert report on the rag that had been used to gag the victim, informed him that he had fifteen days to submit observations or request an additional expert report or second opinion and then interviewed him.

38. By an order of 2 April 1993 the investigating judge refused a new application for release lodged by the applicant on the ground that detention was necessary to preserve public order from the disturbance caused by the offence, to protect the accused and to ensure that he remained at the disposal of the judicial authorities. More specifically, the order stated:

> "Whereas the offence seriously disturbed public order, since it involved the death of a young woman in particularly barbaric circumstances; and whereas this disturbance, which extends beyond French territory, both the victim and the offender being of Lebanese origin, has not ceased to this day;
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> Whereas it is necessary to keep at the disposal of the judicial authorities a person whose life would be endangered by his release, given the indignation and distress that such a measure could not fail to provoke among the victim's relatives, as they would not be able to understand or accept it, although they have hitherto placed their trust in French justice;
>
> And whereas, lastly, the investigation will in all probability be concluded when the inquiries currently in progress have been completed, and the transmission of the file to the public prosecutor's office can be expected to take place by the end of June."

On appeal by Mr I.A., the Indictment Division of the Poitiers Court of Appeal upheld this order in a judgment of 21 April, on the following grounds:

> "Having regard to the penalty to which the accused would be liable if found guilty and the fact that he has family ties in Lebanon, it is to be feared that he might seek to evade justice by absconding to that country. It is obviously necessary to continue his detention to prevent him from doing so.
>
> It is also necessary for the purposes of the inquiries currently in progress, in particular to avoid all risk of collusion with witnesses and to prevent pressure being brought to bear on them, as [I.A.]'s conduct gives reason to fear."

39. On 26 April 1993 the investigating judge appointed Mrs Griffon to conduct a medico-psychological and psychiatric examination of the applicant (her report was filed on 8 July 1993).

40. In the night of 4 to 5 May 1993 a burglary was carried out at the applicant's home, at which official police seals had been placed. On 6 May the vehicle used to move the body, which had been stolen during the burglary, was found in the River Maine at Angers.

41. On 10 May 1993 the investigating judge refused an application for release submitted by the applicant on 5 May, by an order worded as follows:

> "Whereas the accused's detention on remand is necessary
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> to preserve public order from the disturbance caused by the offence,
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> and to ensure that the accused remains at the disposal of the judicial authorities,
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> in that there is strong evidence that [I.A.] is guilty of murder; and in that it is necessary to ensure that he remains at the disposal of the judicial authorities and to forestall any risk of pressure being brought to bear on witnesses."

42. On 28 May 1993 the investigating judge arranged a confrontation between the applicant, his cousin and one of the experts previously appointed (Dr Nadau); they discussed the question whether the lesions found on the victim's body had been caused before death.

43. On 4 June 1993 the investigating judge refused an application for release lodged by Mr I.A. on 1 June, on the ground that his detention was the only way to prevent pressure being brought to bear on witnesses and was necessary to preserve public order from the disturbance caused by the offence and to ensure that the accused would remain at the disposal of the judicial authorities.

He did so again on 18 and 25 June 1993 by means of two orders worded as follows:

> "Whereas there is strong evidence that [I.A.] is guilty of murder;

Whereas from the time of his wife's death until his arrest he showed particular duplicity, attempting to set his family against the young woman's family by making particularly serious false allegations;

Whereas it is to be feared that [I.A.] will abscond to a country where he has family ties;

Whereas it is necessary to ensure that he remains at the disposal of the judicial authorities;

Whereas his detention on remand is also necessary in order to discover the truth, since [he] has continually employed stratagems designed to enable him to evade his responsibilities."

On 9 July 1993 the investigating judge refused another application for release, dated 5 July, on the ground that the applicant's detention was necessary to preserve public order from the disturbance caused by the offence, to protect the accused and to ensure that he remained at the disposal of the judicial authorities.

On 23 July he refused a further application from the applicant, by means of an order with exactly the same wording as those of 18 and 25 June.

On 13 and 23 August, 3 and 14 September, 15 and 29 October and 5 November 1993 he refused applications lodged respectively on 9, 24 and 31 August, 9 September, 11 and 25 October and 2 November. These orders generally stated that Mr I.A.'s detention was the only way to prevent pressure being brought to bear on witnesses and was necessary to preserve public order from the disturbance caused by the offence, to protect the accused and to ensure that he remained at the disposal of the judicial authorities. They also pointed out that there was "strong evidence" that Mr I.A. was "guilty of murder", that "from the time of his wife's death until his arrest" he had shown "particular duplicity", that it was "to be feared that he [would] abscond to a country where he [had] family ties" and that it was therefore necessary "to ensure that he remained at the disposal of the judicial authorities so as not to create any risk of the inquiries needed to reveal the truth being impeded".

In a judgment of 23 November 1993 the Indictment Division of the Poitiers Court of Appeal upheld the order of 5 November, on the grounds that "regard being had to the penalty for the offence concerned, there [was] a strong risk that [I.A.] would abscond to his country of origin before he could be brought to trial" and that "his continued detention [was] the only way to guard against that risk".

44. On 9 November 1993 a Mr A., one of the three people who had carried out the burglary of 4 May, was interviewed by the Angers *SRPJ*. He stated that the purpose of the burglary had been to remove evidence and take away Mr I.A.'s vehicle.

On 22 November 1993, when he was questioned by the investigating judge about his relations with the people who had carried out the burglary at his home, the applicant denied any involvement.

45. On the same day the judge extended Mr I.A.'s detention on remand for one year by an order which stated: "The accused must be kept at the disposal of the judicial authorities, since the serious nature of the offence and the circumstances of the victim's death have very gravely disturbed public order both in France and in Lebanon."

46. A summary report drawn up by the Angers *SRPJ* and completed on 6 December 1993, concerning in particular the inquiries conducted after the burglary of 4 May, was communicated to the investigating judge.

47. On 7 December 1993 the investigating judge interviewed Mr A., who confirmed his statement of 9 November.

48. By two orders of 10 and 17 December 1993, which cited the same grounds as those of 13 and 23 August, 3 and 14 September, 15 and 29 October and 5 November 1993, the investigating judge refused applications for release lodged by the applicant on 6 and 13 December 1993.

*4. The course of the investigation in 1994*

49. On 7 and 21 January and 4 February 1994 the investigating judge refused applications for release lodged on 4, 18 and 31 January, by means of orders worded as follows:

> "Whereas the accused's detention on remand is necessary
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> to preserve public order from the disturbance caused by the offence,
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> to protect the accused,
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> and to ensure that the accused remains at the disposal of the judicial authorities,
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> in that there is strong evidence that [I.A.] is guilty of murder; in that from the time of his wife's death until his arrest he showed particular duplicity; in that it is to be feared that he will abscond to a country where he has family ties; and in that it is therefore necessary to ensure that he remains at the disposal of the judicial authorities."

50. The orders of 7 January and 4 February stated in addition: "The accused's detention on remand is the only way to prevent pressure being brought to bear on witnesses." The second of these did not refer to the need to "protect the accused", but added that detention on remand was "the only way to preserve the evidence".

51. On 7 February 1994 the investigating judge questioned Mr I.A.

On the same day the Angers *SRPJ* interviewed a Mr B., one of the three people who had carried out the burglary of 4 May 1993. Subsequently, the police lost trace of him.

52. By orders of 14 and 22 February 1994 the investigating judge refused applications for release lodged on 9 and 17 February. These orders stated that the applicant's detention on remand was the only way "to preserve evidence [and] prevent collusion between the accused and his accomplices" (order of 14 February) and "to prevent pressure being brought to bear on witnesses" (order of 22 February). For the rest, they repeated the grounds cited in paragraph 49 above.

53. By three orders of 4, 11 and 18 March, the investigating judge refused applications for release lodged on 28 February and 7 and 14 March. The first and third of these orders stated that the applicant's detention on remand was "the only way" to "preserve evidence" and to "prevent pressure being brought to bear on witnesses"; the second mentioned only the second of these grounds. For the rest, they repeated the grounds cited in paragraph 49 above, apart from the fact that the first two made no mention of the necessity of detention for the protection of the accused.

54. In the meantime, on 28 February 1994, an investigating judge from the Angers *tribunal de grande instance* had been appointed to investigate the case, since the investigation conducted up to that point had shown that the crime had been committed within the territorial jurisdiction of that court. On 4 March 1994 the new investigating judge asked for the file to be passed on to him. On 18 March 1994 the investigating judge who had handled the case until then relinquished his charge to the new judge.

55. On 6 June 1994 the new investigating judge questioned Mr I.A., who said that he wished to stand by his previous statements.

56. On 16 and 23 September 1994 the judge refused applications for release lodged by the applicant.

The first of these orders was worded as follows:

> "Whereas the detention on remand of the person under investigation is the only way
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> to preserve evidence,
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> and to prevent pressure being brought to bear on witnesses,
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> in that the person under investigation stands accused of murdering his wife, which he denies; in that there is, however, evidence against him that must be examined; in that, moreover, it appears … from the file that he incited others to burgle his home with a view to the destruction of documents that could have been used as evidence; in

that his release or placement under judicial supervision would not be, at the present stage of the investigation, conducive to discovery of the truth;

Whereas the detention on remand of the person under investigation is necessary

to preserve public order from the disturbance caused by the offence,

and to ensure that the person under investigation remains at the disposal of the judicial authorities,

in that there is strong evidence that [I.A.] is guilty of murder, an offence which, by its nature, causes a manifest and lasting disturbance of public order; in that the person under investigation has shown duplicity; and in that, having ties with a foreign country, it is to be feared that he would abscond if released."

The second order read as follows:

"Whereas the detention on remand of the person under investigation is the only way

to preserve evidence,

and to prevent collusion between the person under investigation and his accomplices,

in that further inquiries are needed to uncover the full truth; in particular, light needs to be shed on the circumstances in which the burglary of the home of the person concerned – the scene of the crime – was organised and carried out;

Whereas the detention on remand of the person under investigation is necessary

to preserve public order from the disturbance caused by the offence,

and to prevent any repetition of the offence,

in that, as the case file stands, there is strong evidence that the person concerned killed his wife; in that this is obviously an objectively serious offence which has accordingly caused a manifest and lasting disturbance of public order; in that the conduct of the person concerned during the investigation and the ties he has with a foreign country give reason to fear that he might seek to evade justice and his responsibilities; and in that the person concerned is already due to be examined on 11 October next."

57. On 11 October 1994 the applicant was examined by the investigating judge.

58. On 18 October and 21 and 25 November 1994 the investigating judge refused applications for release of 13 October and 17 and 22 November by three orders drafted in exactly the same terms as the order of 23 September (apart from the reference to the examination of 11 October).

59. On 28 October 1994 the investigating judge instructed the director of the Angers *SRPJ* to find and interview a Mr F. and Mr B., two of the three people who had carried out the burglary of 4 May 1993. Mr F. was traced on 29 November 1994: he was in prison under the assumed identity of his own brother.

60. On 3 November 1994, acting on instructions of 24 October, the Cholet gendarmerie removed the official police seals from Mr I.A.'s house.

61. On 30 November 1994 the investigating judge extended the applicant's detention on remand for one year, by an order which read:

> "Whereas the detention on remand of the person under investigation is the only way
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> to preserve evidence,
>
> and to prevent collusion between the person under investigation and his accomplices,
>
> in that further inquiries are needed to uncover the full truth; in particular, light needs to be shed on the circumstances in which the burglary of the home of the person concerned – the scene of the crime – was organised and carried out; and in that the police have been given instructions to try to apprehend the last of the men involved in the burglary;
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> Whereas the detention on remand of the person under investigation is necessary
>
> to ensure that the person under investigation remains at the disposal of the judicial authorities,
>
> and to preserve public order,
>
> in that, as the case file stands, and despite the denials of [I.A.], there is strong and consistent evidence that he killed his wife in particularly odious circumstances; in that this is obviously an objectively serious offence which has accordingly caused a manifest and lasting disturbance of public order; in that the conduct of the person under investigation during both the police inquiries and the judicial investigation and the ties he has kept with his country of origin give reason to fear that he might seek to evade justice and his criminal responsibility."

62. On 2 December 1994 the investigating judge refused an application for release submitted on 28 November by an order written in the same terms as the order of 30 November.

*5. The course of the investigation in 1995 and 1996*

63. On 5 January 1995 Mr I.A. again applied for release; this was refused by an order of 10 January 1995, on the same grounds as those set out in the orders of 30 November and 2 December 1994.

The applicant appealed on 12 January 1995, relying in particular on Article 5 § 3 of the Convention; he complained of the length of the proceedings and argued that he could not be held responsible for this, since he had not requested any step likely to prolong the investigation, nor had he used any procedural remedies capable of suspending its progress. In response, the Indictment Division of the Angers Court of Appeal upheld the order in a judgment of 25 January 1995, holding:

> "…
>
> Although the killing of a woman by her husband is not generally a complex matter, it should be noted in the present case that this killing has been denied and presented as a suicide by hanging, just as the acts of torture and barbarity suffered by the victim during the days which preceded her death have been denied, but above all that the motive for this crime, without knowing which it is not possible to assess the perpetrator's responsibility, has been carefully concealed.
>
> The silence constantly maintained by the person under investigation, the inertia he has shown in order to prevent the investigation moving rapidly forward and the need to conduct inquiries into the burglary committed at his home, in which one of his fellow prisoners participated, which was designed to destroy documents and the vehicle used to move the body, and which could have been carried out at the behest of [I.A.], obliged the investigating judge to order many expert opinions and to conduct inquiries which cannot be regarded as accessory in order to uncover the truth. These have been the cause of the protractedness of the proceedings and the detention of which [I.A.] complains.
>
> The risk that [I.A.] might bring pressure to bear on witnesses of the offences committed during the days which preceded the victim's death, in concert with the accomplices he may well have had, and the risk that he might abscond to Lebanon or another country where he could be assisted by members of the large community of Lebanese emigrants make it essential for his detention to continue, since judicial supervision in this case is not a measure which can perform the functions set out in Article 137 of the Code of Criminal Procedure."

The applicant appealed on points of law against the above decision, relying on Article 5 § 3 of the Convention in particular. He submitted that his refusal to admit the offence which he stood accused of, and which he denied having committed, could not amount to inertia on his part; that the Court of Appeal had not explained how the need to conduct inquiries into the burglary carried out at his home prevented the investigation from

proceeding in connection with the events which had led to his detention on remand; and that it had not given detailed reasons for its decision.

In a judgment of 22 May 1995, the Court of Cassation dismissed this appeal.

64. In the meantime, on 18 January 1995, acting pursuant to the instructions of 28 October 1994 and further instructions given on 5 January 1995, the Angers *SRPJ* had interviewed Mr F., who had confirmed Mr A.'s statement to the effect that the burglary at the applicant's home had been carried out at his behest with the aim of ensuring that certain documents disappeared.

On 10 February 1995 the investigating judge had questioned Mr I.A. about the circumstances of the burglary; he had denied being behind it.

On 24 March 1995 the judge had instructed the Metz gendarmerie by warrant to find out Mr A.'s address so that he could be served with a summons to appear before him at his chambers. The warrant had been returned on 6 April 1995 and the summons had been served on 5 May.

On 31 May 1995 the investigating judge confronted the applicant with Mr A. and Mr F. All three confirmed their previous statements about the burglary.

65. On 29 June 1995 the investigating judge informed Mr I.A. that his case file was to be communicated to the public prosecutor in twenty days' time, after which he would no longer be able to request additional investigative measures.

On 19 July 1995 the applicant requested the investigating judge to order such measures; he asked for an international letter of request to be issued asking for inquiries to be conducted in Lebanon about the victim's personality and an assessment made of whether she had suicidal tendencies. He also asked for three expert opinions to be ordered to describe the system of marriage and divorce in Lebanon and to explain the reasons why ethanol had been found in the victim's body, the different nature of the strangulation marks found, what happened to the tongues of people who had been hanged or strangled and whether the position of the arms as he had described it was what would have been expected.

By an order of 11 August 1995 the investigating judge refused these requests after noting their "particularly late" submission and the lack of justification for them.

66. On 19 July 1995 Mr I.A. had also applied to the Indictment Division asking it to declare the proceedings null and void.

67. On 26 July 1995 the investigating judge refused an application for release by an order worded as follows:

> "…
>
> Whereas the detention on remand of the person under investigation is the only way to prevent pressure being brought to bear on the witnesses, the victim,

in that, by his attitude throughout the investigation, the person under investigation has shown how determined he is to impede the discovery of the truth and in that it is to be feared that he might bring pressure to bear on witnesses of the offences committed during the days which preceded the victim's death;

Whereas the detention on remand of the person under investigation is necessary to preserve public order from the disturbance caused by the offence,

in that the person concerned is accused of a killing carried out in odious circumstances, which have disturbed public order in a particularly lasting manner; and in that [I.A.]'s conduct and ties outside France give reason to fear that he might seek to evade justice."

68. On 31 July 1995 the investigating judge transferred the case file to the public prosecutor's office.

69. On 4 August 1995 the investigating judge refused an application for release of 31 July, by an order written in exactly the same terms as the order of 26 July.

70. On 11 August 1995, in view of the application of 19 July in which Mr I.A. had asked the Indictment Division of the Angers Court of Appeal to declare the proceedings null and void, the investigating judge stayed the investigation pending the Indictment Division's decision and ordered the case file to be transmitted to its president.

71. On the same day the investigating judge refused an application for release by an order written in the same terms as those of 26 July and 4 August.

He refused further applications on 18 and 25 August, 1 and 29 September, 20 and 26 October and 3 and 10 November 1995. These orders reproduced the reasons set out in those of 26 July and 4 and 11 August and in addition expressly mentioned that detention on remand was "necessary to ensure that the person under investigation remain[ed] at the disposal of the judicial authorities". The last three orders aded that, by his attitude "during both the police inquiries and the investigation", the applicant had shown his determination to "mislead the investigators and witnesses about the facts", that the risk of pressure being brought to bear also applied to witnesses of the events that had followed the victim's death, that the disturbance to public order caused by the offence was "exceptional" and that Mr I.A.'s conduct and ties outside France gave reason to fear that he might seek to evade justice "as he [had] tried to evade his criminal responsibility".

72. By a judgment of 15 November 1995 the Indictment Division of the Angers Court of Appeal noted that the proceedings were lawful and remitted the case to the investigating judge for further investigation. On 20 November 1995 the applicant appealed on points of law.

73. On 17 November 1995, by an order identical to those of 26 October and 3 and 10 November, the investigating judge refused an application for release submitted on 13 November.

74. The prosecution's final submissions, calling for the file to be transmitted to the Principal Public Prosecutor, were filed on 21 November 1995 and the transmission order was made on 6 December 1995.

75. On 24 November and 1 and 6 December 1995, by orders which reproduced the reasons set out in those of 26 October and 3, 10 and 17 November, the investigating judge refused applications for release submitted by the applicant.

On 8 December 1995 the applicant appealed to the Indictment Division of the Angers Court of Appeal against the order of 6 December. He complained of the length of his detention and the length of the proceedings.

By a judgment of 20 December 1995 the Indictment Division dismissed the appeal, on the following grounds:

"…

[I.A.]'s lawyer cannot maintain that the investigation "has still not been closed" when the order for the file to be transmitted to the Principal Public Prosecutor was made on 6 December 1995, nor can he maintain that the Court of Cassation's decision of 22 May 1995 dismissing his client's appeal on points of law against the judgment of 25 January upholding an order refusing an application for release did not influence the speediness of the investigation, when he waited until 19 July before asking the investigating judge to take further steps and at the same time requested the Indictment Division to rule that the proceedings were null and void, since those applications, which do not appear to be really consistent with each other, necessarily caused some delay.

…

The killing of a woman by her husband is not generally a complex matter, but it should be observed in the present case, firstly, that the fact that the person under investigation has maintained a constant silence about the real circumstances of his wife's death and the acts of torture and barbarity she suffered, the inertia he has shown in order to prevent the investigation moving rapidly forward and the need to conduct inquiries into the burglary committed at his home, in which one of his fellow prisoners participated, which was designed to destroy documents and the vehicle used to move the body, and which seems to have been carried out at the behest of [I.A.], obliged the investigating judge to order many expert opinions and to conduct inquiries which cannot be regarded as accessory in order to uncover the truth.

Secondly, the applications and appeals lodged by [I.A.] have necessarily prolonged the proceedings and the detention whose length he complains of.

As the preparatory investigation is now closed, [I.A.]'s detention on remand is necessary with a view to the definitive investigation of the facts to be conducted at his trial; to prevent him bringing pressure to bear on the witnesses of the offences committed during the days which preceded the victim's death; to prevent him absconding to Lebanon or some other country and to guarantee that he appears in court to stand trial.

As judicial supervision would not be adequate in the present case to perform the functions set out in Article 137 of the Code of Criminal Procedure, the impugned order is upheld."

76. On 5 January 1996 the applicant again submitted an application for release to the Indictment Division of the Angers Court of Appeal, which dismissed it in a judgment of 17 January 1996, on the following grounds:

"…

Although the detention on remand he has undergone is abnormally long for a case in which a woman has been killed by her husband, as this court found in its previous judgment, the length of his detention is not attributable to any dysfunction of the judicial system but solely to the conduct of the person under investigation, who has maintained a constant silence about the real circumstances of his wife's death and the acts of torture and barbarity she suffered, to the inertia he has shown in order to prevent the investigation moving forward and to the need to shed light on the burglary committed at his home, these inquiries and expert reports having been essential to make progress in discovering the truth in view of the attitude shown by the person under investigation.

Lastly, the applications and appeals lodged by [I.A.] have necessarily prolonged the proceedings and the detention whose length he complains of.

Regard being had to these circumstances, and to the judgment in the case of W. v. Switzerland delivered [by the European Court of Human Rights] on 26 January 1993, the period of time already spent in detention on remand has not exceeded the "reasonable time" prescribed by Article 5 § 3 of the [Convention].

As the Indictment Division is due to rule on 24 January 1996 on the charges to be brought against [I.A.], his detention on remand is necessary to prevent him bringing pressure to bear on the witnesses of the offences committed during the days which preceded the victim's death, to prevent him absconding to Lebanon or some other country and to guarantee that he appears in court to stand trial.

As judicial supervision would not be adequate in the present case to perform the functions set out in Article 137 of the Code of Criminal Procedure, the impugned order is upheld."

## C. The trial

### *1. Committal for trial in the Maine-et-Loire Assize Court*

77. By a judgment of 24 January 1996, the Indictment Division committed the applicant for trial in the Maine-et-Loire Assize Court for murder and made an order for his delivery into custody. On the same day the applicant appealed to the Court of Cassation against this judgment.

On 20 March 1996 the President of the Criminal Division of the Court of Cassation ordered the continuation of the proceedings.

On 25 June 1996 the Criminal Division dismissed the applicant's appeals against the Indictment Division's judgments of 15 November 1995 (see paragraph 72 above) and 24 January 1996.

### *2. The proceedings in the Maine-et-Loire Assize Court*

78. At the criminal hearing on 11 December 1996 the Assize Court adjourned the case, in response to an application from the applicant, who objected to being tried in the absence of two witnesses (the victim's sister-in-law and Mr B., one of the three people who had carried out the burglary of 4 May 1993) and an expert who had all been duly summoned.

At the end of the hearing the applicant's lawyer submitted an application for his release, which the court dismissed after retiring to deliberate.

79. By a judgment of 20 March 1997 the Assize Court sentenced the applicant to life imprisonment, with ineligibility for parole during the first eighteen years.

### *3. The proceedings in the Criminal Division of the Court of Cassation*

80. The applicant appealed on points of law against the judgment of 20 March 1997.

By a judgment of 1 April 1998 the Criminal Division quashed the judgment of the Maine-et-Loire Assize Court and declared it null and void, on the ground that the Assize Court had misapplied Article 346 of the Code of Criminal Procedure when it ruled on an application by the applicant's counsel for a note to be entered in the record by omitting to allow the latter or his client to address the court last. It remitted the case to the Loire-Atlantique Assize Court.

### D. The applications for release submitted by the applicant after the judgment of the Court of Cassation

81. On 6 April 1998 the applicant lodged an application for release with the Indictment Division of the Rennes Court of Appeal. In a letter of 22 April, his lawyer informed the President of the Indictment Division that his client wished to withdraw the application. This was noted by the Indictment Division in a judgment of 23 April.

82. On 13 May 1998 Mr I.A. lodged a further application for release, which the Indictment Division of the Rennes Court of Appeal dismissed in a judgment of 28 May 1998, on the following grounds:

> "[I.A.] is liable to the penalty for a serious criminal offence.
>
> The evidence against him is particularly weighty, particularly in the light of what was revealed by examination of the victim's body, which he admits getting rid of.
>
> The results contradicted the successive versions of events he gave during the investigation, which he took care to adapt and adjust to each new finding made as the inquiries progressed.
>
> Although his detention on remand has indeed lasted for a long time, its length is not attributable to any dysfunction of the judicial system, but is mainly due to the attitude shown by the accused, who, through his silence, his contradictions and his numerous applications (notably for relinquishment of jurisdiction by the investigating judge), has managed to impede the progress of the proceedings considerably and delay their outcome.
>
> In addition to the difficulties encountered in the course of the investigation, there was the need to find time for hearings in the Assize Court, and a new appeal, which was determined more than a year after it was lodged.
>
> In view of the particular, and indeed exceptional, circumstances, [I.A.]'s detention on remand has not exceeded the reasonable time prescribed by Article 5 of the European Convention on Human Rights.
>
> Moreover, the defendant has not provided sufficient guarantees that he will appear in court to stand trial.
>
> [I.A.] is of Lebanese origin.
>
> He asserts that he wishes to live in Rennes while waiting to appear in the Loire-Atlantique Assize Court. However, the court has reason to doubt that, particularly in the light of the severity of the penalty to which he is liable.
>
> It is to be feared that he will seek to evade justice.
>
> The risk of the defendant disappearing without trace seems considerable.

In the light of all the above considerations, it must be ensured that [I.A.] remains at the disposal of the judicial authorities.

These particular circumstances, deduced from the evidence in the case, establish that [I.A.]'s continued detention on remand remains justified with reference to the criteria exhaustively listed in Article 144 of the Code of Criminal Procedure…"

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Detention on remand

83. Article 144 of the Code of Criminal Procedure provides:

"In cases involving serious crimes (*matière criminelle*) and lesser criminal offences (*matière correctionnelle*), if the sentence to which the person under investigation is liable is not less than one year's imprisonment in the case of offences detected immediately after being committed, or two years' imprisonment in other cases, and if the constraints of judicial supervision are inadequate with regard to the functions set out in Article 137, the detention on remand may be ordered [or (Law no. 93-2 of 4 January 1993) 'extended']:

1. Where the detention on remand of the person under investigation is the sole means of preserving evidence or of preventing either pressure being brought to bear on witnesses or victims or collusion between persons under investigation and accomplices;

[2. (Law no. 93-2 of 4 January 1993) Where this detention is necessary to protect the person concerned, to put an end to the offence or prevent its repetition, to ensure that the person concerned remains at the disposal of the judicial authorities or to preserve public order from the disturbance caused by the offence;]

..."

84. Detention on remand is imposed by means of an order which must set out the legal and factual grounds for the decision by reference to the provisions of Article 144 only. This order is notified orally to the accused, who receives a full copy of it upon signing the case file to acknowledge receipt (Article 145, first paragraph).

The investigating judge gives his decision in chambers, after an adversarial hearing in the course of which he hears the submissions of the public prosecutor, then the observations of the person under investigation and, if appropriate, of his counsel (Article 145, fourth paragraph).

### B. Length of detention on remand

85. A person under investigation on suspicion of having committed a serious crime may not in principle be detained for more than one year.

However, the investigating judge may, at the end of that period, extend detention for a period of not more than one year, by a decision given in accordance with the provisions of the first and fourth paragraphs of Article 145; that decision may be renewed in accordance with the same procedure until such time as the investigating judge makes the order terminating the investigation (Article 145-2).

### C. Applications for release

86. An application for release may be submitted to the investigating judge at any time by the person detained or his lawyer subject to the obligations set out in Article 147; the person concerned is required to give an undertaking to attend immediately in person when a new step is taken in the proceedings if directed to do so and to keep the investigating judge informed of all his movements.

The investigating judge immediately communicates the file to the public prosecutor so that the latter can make his submissions (Law no. 93-1013 of 24 August 1993 abolished the provision which required the investigating judge to inform civil parties that an application for release had been made). The investigating judge must in principle give his decision within five days of communicating the file by an order setting out the legal and factual grounds for the decision with reference to the provisions of Article 144.

Where the above time-limit is not respected, the person detained may apply directly to the indictment division, which must reach a decision within twenty days, failing which the person detained is automatically released, unless verifications concerning his application have been ordered.

Where release is granted, it may be accompanied by judicial supervision measures (Article 148).

87. Release may also be requested “in any event” by any person under investigation or defendant and at any time in the proceedings.

Where application is made to a court of trial or appeal, the latter has the power to grant conditional release; before committal for trial in the assize court, and in between assize court sessions, that power belongs to the indictment division.

In the event of an appeal on points of law, and until the Court of Cassation has given judgment, the decision on the application for release is given by the court which last tried the case on the merits. If the appeal on points of law has been lodged against an assize court judgment, the decision regarding detention is given by the indictment division (Article 148-1).

The court which receives the application must in principle give judgment within ten days, if it is a court of trial, or twenty days, if it is a court of appeal. Failing that, detention on remand is terminated and the defendant, if not detained for another reason, is automatically released (Article 148-3).

### D. Appeals against orders refusing release and appeals on points of law

88. An appeal against an order refusing release lies to the indictment division. It may be lodged by the person under investigation (Article 186) or by the Public Prosecutor or Principal Public Prosecutor (Article 185). Such an appeal does not have suspensive effect.

In principle the indictment division must rule within fifteen days of the appeal, failing which the person concerned is automatically released (Article 194).

89. When dealing with an appeal on points of law against a judgment of the indictment division concerning detention on remand, the Criminal Division of the Court of Cassation must rule within three months of receiving the case file, failing which the person concerned is automatically released (Article 567-2).

## PROCEEDINGS BEFORE THE COMMISSION

90. The applicant applied to the Commission on 29 March 1993. He complained of the excessive length of the criminal proceedings against him and, under Article 5 § 3 of the Convention, of his detention on remand. He also maintained that the investigation of his case had not been impartially conducted.

91. On 9 April 1997 the Commission (Second Chamber) declared the application (no. 28213/95) admissible in so far as it concerned the length of the proceedings – examining that complaint under Article 6 § 1 of the Convention – and of the detention on remand. In its report of 10 September 1997 (Article 31), it expressed the unanimous opinion that there had been a breach of Article 5 § 3 but not of Article 6 § 1. The full text of the Commission's opinion is reproduced as an annex to this judgment[1].

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

# FINAL SUBMISSIONS TO THE COURT

92. In his memorial Mr I.A. asked the Court

> "to declare [his] application admissible and well-founded;
>
> to draw any legal conclusions from the failure to observe the provisions of Articles 6 § 1 and 5 § 3 of the European Convention on Human Rights during the investigation and indictment procedure followed in [his] respect…;
>
> to condemn as such the procedure followed in [his] respect by the French judicial authorities."

93. The Government asked the Court to hold "that there was no violation of Article 5 § 3 of the Convention" and to dismiss Mr I.A.'s application as "manifestly ill-founded".

# AS TO THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

94. The applicant complained of the length of his detention on remand and alleged a violation of Article 5 § 3 of the Convention, which provides:

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

95. The Government contested this argument, whereas the Commission accepted it.

### A. Period to be taken into consideration

96. Those appearing before the Court agreed that the period to be considered had begun on the day when Mr I.A. was charged with murder and placed in detention on remand.

97. As regards the end of the period concerned, the applicant submitted that he was still "detained" pending trial within the meaning of Article 5 § 3 since his conviction had been retrospectively annulled by the Court of Cassation and the case had not yet been determined by the court to which it had been remitted.

In the Government's view, the relevant date was 20 March 1997, when Mr I.A. was convicted by the Maine-et-Loire Assize Court. They argued on that basis that the detention in issue had lasted five years, three months and thirteen days.

In its report of 10 September 1997, the Commission also took 20 March 1997 as the relevant date. Nevertheless, at the hearing before the Court, the Delegate of the Commission expressed the opinion that the retrospective effect of the annulment of the Maine-et-Loire Assize Court's judgment by the Court of Cassation on 1 April 1998 should be taken into account. According to domestic law, the conviction was deemed never to have taken place, so that the applicant's detention on remand had not been interrupted. That approach was moreover apparent from the reasoning of the judgment delivered by the Indictment Division of the Rennes Court of Appeal on 28 May 1998.

98. The Court reiterates that in principle conviction by a court marks the end of the period to be considered under Article 5 § 3; from that point on, the detention of the person concerned falls within the scope of Article 5 § 1 (a) of the Convention (see, for example, the B. v. Austria judgment of 28 March 1990, Series A no. 175, p. 14, § 36).

In the present case the applicant was sentenced to life imprisonment by a judgment of the Maine-et-Loire Assize Court of 20 March 1997 (see paragraph 79 above). That was the reason for his detention between the latter date and 1 April 1998, when the Criminal Division of the Court of Cassation quashed and annulled his conviction; during that period he was obviously detained "after conviction by a competent court" not "for the purpose of bringing him before the competent legal authority". Accordingly, notwithstanding the retrospective effect in French law of the judgment annulling his conviction, the period to be considered under Article 5 § 3 ended on 20 March 1997.

As to the new period of detention on remand, which began after 10 September 1997, the date of adoption of the Commission's report, and consequently was not the object of a complaint examined by the Commission, the Court considers that it should not be taken into account (see the Kemmache v. France (nos. 1 and 2) judgment of 27 November 1991, Series A no. 218, p. 23, § 44).

In short, the period of detention that the Court must now consider lasted just over five years and three months.

## B. Reasonableness of the length of detention

### *1. Arguments of those appearing before the Court*

99. Mr I.A. submitted that the length of his detention on remand could not be held to be justified under Article 5 § 3 of the Convention.

There was no risk of collusion or of a repetition of the offence because the authorities were not looking for any accomplice or co-principal and he had no previous convictions. Nor could the fact that he denied killing his wife justify his continued detention, since that attitude was purely and simply the expression of the system of defence he had chosen. Moreover, in view of the offence he had been charged with and the lack of any real international dimension to the case, it could not be described as complex. Lastly, it had been legitimate for him to make use of the remedies available to him under French law.

The truth was that the investigating judges themselves had slowed down the progress of the investigation considerably by systematically trying to obtain a confession. That was the reason for the length of his detention on remand.

100. The Government agreed that the period of detention on remand undergone by the applicant had been lengthy, but argued that the length was justified by the "very special circumstances of the case".

The persistence of reasons to suspect the applicant during the period under consideration was not in doubt. The other grounds cited by the competent courts had been relevant and sufficient.

The nature and circumstances of the crime concerned, the accused's attitude in the weeks that followed the crime and during the investigation, and the international dimension of the case – which had caused quite a stir in Lebanon – had all contributed to a serious and lasting disturbance of public order which release of the applicant would have exacerbated.

In addition, according to the Government, on account of Mr I.A.'s personality and conduct the investigating judge could legitimately fear that once released he would attempt to impede discovery of the truth by bringing pressure to bear on witnesses and contacting any accomplices he might have had. Besides, he had lied to those around him and hidden or destroyed evidence, notably by instigating from his prison cell the theft of documents he considered compromising and the destruction of the vehicle that had been used to move the body. The fear that pressure would be brought to bear on witnesses had remained relevant after 7 December 1993 and until the hearing before the Assize Court, as was evidenced by the fact that the investigators had interviewed witnesses after that date on instructions from the investigating judge and the fact that on 31 May 1995 the investigating judge had confronted the accused with the people who had carried out the robbery mentioned above. In short, the requirements of the investigation had pleaded in favour of keeping the applicant detained.

Furthermore, various evidence indicated that there was a serious risk that, if released, Mr I.A. would abscond: firstly, in their statements of 16 January and 20 March 1992, his ex-wife and his mistress had mentioned his intention of leaving France; secondly, at the time of his arrest, he had been trying to sell his house. The competent judges had looked into the question of substituting judicial supervision for detention on remand and had noted the inadequacy of the other guarantees provided for under French law to ensure that a defendant appears in court to stand trial. In any event, in view of the applicant's modest income, his release on payment of a security would not have been conceivable.

In short, the circumstances of the case justified the fact that the applicant had not been released during the proceedings. As for the length of his detention on remand, this had been mainly due to his conduct: by refusing to cooperate with the investigators and by lodging numerous applications and appeals, he had played a large part in slowing down the progress of the investigation, thereby putting off the date of his trial. On the other hand, the conduct of the judicial authorities in that respect had been irreproachable.

101. The Commission considered that the seriousness of the offence the applicant stood accused of and the persistence of reasons to suspect him, even though these subsequently proved to be well-founded, were not in themselves sufficient to justify the length of the detention in issue.

It acknowledged that Mr I.A.'s lack of cooperation had made necessary a great deal of detailed investigative work and that the case was relatively complex, but went on to say that these were not the main reasons for the length of the period concerned.

It was not convinced that a risk of pressure being brought to bear on witnesses persisted after 7 December 1993, when the investigating judge took the last statement from a witness. As to the danger of collusion, although this had been a very real risk at the beginning of the investigation, it had gradually diminished.

In addition, the Commission considered that the risk of the applicant's absconding was not sufficient to justify continuing his detention on remand for more than five years. Moreover, apart from the matter of Mr I.A.'s Lebanese origin, the decisions refusing his applications for release did not mention any circumstance capable of establishing that there was a risk he might abscond or a lack of guarantees that he would appear for trial, and the domestic courts had not considered other means of ensuring that he would appear for trial, such as the lodging of a security.

With regard to the disturbance of public order likely to have been caused by the crime in question, the Commission noted that the French courts had cited this ground only on rare occasions and in a purely abstract manner.

In short, the applicant's detention on remand had lasted for so long that it required a particularly convincing justification, which the Government had not been able to supply.

*2. The Court's assessment*

**(a) Principles established by the Court's case-law**

102. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention.

The persistence of reasonable suspicion that the person arrested has committed an offence – a point which was not contested in the present case – is a condition *sine qua non* for the validity of the continued detention, but, after a certain lapse of time, it no longer suffices; the Court must then establish whether the other grounds cited by the judicial authorities continue to justify the deprivation of liberty. Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see, among other authorities, the Letellier v. France judgment of 26 June 1991, Series A no. 207, p. 18, § 35).

**(b) Application to the present case**

103. It appears from the documents on the domestic proceedings at the Court's disposal that, during the period considered, the French courts ruled on the applicant's detention on remand fifty-seven times at first instance (orders of 9 December 1991, 29 May, 14 September, 17 November and 4 December 1992, 13 January, 5 March, 2 April, 10 May, 4, 18 and 25 June, 9 and 23 July, 13 and 23 August, 3 and 14 September, 15 and 29 October, 5 and 22 November and 10 and 17 December 1993, 7 and 21 January, 4, 14 and 22 February, 4, 11 and 18 March, 16 and 23 September, 18 October, 21, 25 and 30 November and 2 December 1994, 10 January, 26 July, 4, 11, 18 and 25 August, 1 and 29 September, 20 and 26 October, 3, 10, 17 and 24 November and 1 and 6 December 1995 and judgments of 17 January and

11 December 1996) and five times on appeal (judgments of 26 June 1992, 21 April 1993, 23 November 1993, and 25 January and 20 December 1995).

The grounds for their decisions refer to Article 144 of the Code of Criminal Procedure, under which detention on remand cannot be ordered or extended unless it is "the sole means" "of preserving evidence", "of preventing pressure being brought to bear on witnesses or victims", or "of preventing collusion between persons under investigation and accomplices", or is "necessary" to "protect the person concerned", to "put an end to the offence or prevent its repetition", to "ensure that the person concerned remains at the disposal of the judicial authorities" or to "preserve public order from the disturbance caused by the offence" (see paragraph 83 above).

Before considering the relevance and adequacy of these grounds in the present case, the Court observes that those relating to the need to ensure that the applicant remained at the disposal of the judicial authorities and to preserve public order from the disturbance caused by the offence appear in practically every one of these decisions, whereas the other grounds are not found so regularly. Moreover, although the decisions set out the "legal" grounds on which they are based, many of them contain very few details about the "factual" considerations underpinning them.

*(i) The need to preserve public order from the disturbance caused by the offence*

104. This ground appears in most of the decisions concerning the applicant's detention on remand – with the exception of those of 16 June 1992, 21 April, 18 and 25 June, 23 July, 23 November and 10 December 1993, 25 January and 20 December 1995 and 17 January 1996.

The Court accepts that, by reason of their particular gravity and public reaction to them, certain offences may give rise to a social disturbance capable of justifying pre-trial detention, at least for a time. In exceptional circumstances this factor may therefore be taken into account for the purposes of the Convention, in any event in so far as domestic law recognises the notion of disturbance to public order caused by an offence. However, this ground can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the accused's release would actually disturb public order. In addition, detention will continue to be legitimate only if public order actually remains threatened; its continuation cannot be used to anticipate a custodial sentence (see the previously cited Letellier judgment, p. 21, § 51).

The above conditions have not been satisfied in the present case, since those of the decisions in issue which go some way towards substantiating this ground do no more than refer in an abstract manner to the nature of the crime concerned, the circumstances in which it was committed and, occasionally, the reactions of the victim's family.

*(ii) The need to ensure that the applicant remained at the disposal of the judicial authorities*

105. All the decisions relating to Mr I.A.'s detention on remand cite this ground, since the competent courts considered that there was a risk the applicant might abscond if released. They are based in the main on the applicant's links with Lebanon and, in some cases, his "conduct" (that applies to the order of 23 September 1994 and most of the subsequent decisions) and the penalty to which he was liable (orders of 4 December 1992 and 13 January 1993).

These are undoubtedly circumstances which suggest a danger of flight, and the evidence in the file tends to show their relevance in the instant case. Nevertheless, the Court notes the sketchiness of the reasoning given on this point in the decisions in issue. It further notes that, although such a danger necessarily decreases as time passes (see the Neumeister v. Austria judgment of 27 June 1968, Series A no. 8, p. 39, § 10), the judicial authorities omitted to state exactly why in the present case there was reason to consider that it persisted for more than five years.

106. The Court notes, like the Government, that the decisions in issue referred to the inadequacy of judicial supervision and therefore accepts that the question whether the applicant was capable of providing adequate guarantees that he would appear for trial if released was considered. Here again, however, it can only note the deficient reasoning of the decisions concerned.

*(iii) The need to prevent repetition of the offence*

107. This ground appears to be of secondary importance in the light of the circumstances of the case. Besides, the orders which cite it – those of 23 September, 18 October and 21 and 25 November 1994 – do not mention any consideration capable of substantiating it in those circumstances.

*(iv) The need to protect the applicant*

108. The Court accepts that in some cases the safety of a person under investigation requires his continued detention, for a time at least. However, this can only be so in exceptional circumstances having to do with the nature of the offences concerned, the conditions in which they were committed and the context in which they took place.

In the present case this ground appears in the order of 9 December 1991, but not in that of 16 June 1992; it is repeated in the orders of 14 September, 17 November and 4 December 1992, but is missing from that of 13 January 1993; it reappears in the orders of 5 March and 2 April 1993 but is no longer found in the decisions of 21 April, 10 May and 4, 18 and 25 June 1993; it is cited again in that of 9 July 1993, but not in that of 23 July 1993, and then reappears in the seven orders made between 13 August and 5 November 1993; it is not mentioned in the decisions of 22 and 23 November and 10 December 1993, but is mentioned in that of 17 December 1993; it is missing from the decision of 7 January 1994, but is found again in those of 21 January and 4, 14 and 22 February 1994; the decisions of 4 and 11 March no longer refer to it, but it reappears in that of 18 March 1994.

This ground was therefore cited intermittently by the judicial authorities, as if the dangers threatening the applicant regularly disappeared and reappeared.

Moreover, the few decisions which refer to factors that might explain why there was a need to protect the applicant mention the risk of "revenge attacks by the victim's family" or "reprisals" (orders of 9 December 1991 and 4 December 1992), or the "fear" expressed by the applicant on account of the "frequently barbaric and unjust [Lebanese] customs" (orders of 14 September and 17 November 1992). In particular, they omit to specify why there was such a need when almost all the victim's family lived in Lebanon.

*(v) The risk of collusion with accomplices*

109. This ground appears in the decisions of 4 December 1992, 13 January 1993, 30 November and 2 December 1994 and 10 and 25 January 1995.

It seems natural that the investigating judge should have envisaged at the beginning of his inquiries the possibility that the accused had not acted alone, and should therefore have formed the view that there was a risk of collusion which made it necessary for the applicant's detention to continue. In that respect, the terms of the order of 4 December 1992 (see paragraph 34 above) are convincing. However, it appears from the case file that there was no subsequent evidence to support that hypothesis: thus, with the passage of time, this ground lost its relevance.

*(vi) The risk of pressure being brought to bear on witnesses and of evidence being destroyed*

110. The risk of pressure being brought to bear on witnesses first appears in the decisions of 14 September and 17 November 1992 but is no longer found in those of 4 December 1992 and 13 January 1993; it

reappears in that of 5 March 1993 but is not mentioned in that of 2 April 1993; it is repeated in those of 21 April, 10 May and 4 June 1993, but is not found in those of 18 and 25 June and 9 and 23 July 1993; it reappears in the seven orders made between 8 August 1993 and 5 November 1993, then disappears from the decisions of 22 and 23 November and 10 December 1993, only to return in those of 17 December 1993 and 7 January 1994; it is not found in the order of 14 February 1994, but appears again in the eight orders made between 22 February and 21 November 1994; it is missing from the four decisions given between 25 November 1994 and 10 January 1995, but appears in the eighteen decisions given between 25 January 1995 and 17 January 1996.

The risk of evidence being destroyed is mentioned for the first time in the decision of 14 September 1992; with the exception of the order of 17 December 1993, the twenty-four decisions given between 17 November 1992 and 21 January 1994 no longer mention it; it is repeated in those of 4 and 14 February 1994, but not in that of 22 February 1994, and reappears in that of 4 March 1994 but is not found in that of 11 March 1994; it returns in the five decisions given between 18 March 1994 and 21 November 1994 but not in that of 25 November 1994; it appears for the last time in the orders of 30 November and 2 December 1994 and 10 January 1995.

The Court finds it hard to understand how such risks could fluctuate in such a way. It accepts nevertheless – as the competent judicial authorities noted – that they were apparent from the applicant's personality and his attitude during the investigation. However, although they thus justified the applicant's detention at the beginning, they necessarily gradually lost their relevance as the few witnesses in the case were interviewed and the investigations proceeded.

It is true that the inquiry conducted after the burglary of 4 May 1993 at Mr I.A.'s home revealed that it had been carried out at his behest with the aim of removing certain documents (see paragraph 40 above). It can easily be understood how an event of that nature could lead the investigating authorities to fear that, if released, the accused might endeavour to conceal other evidence. It appears, however, from the case file that at the stage of the proceedings at which the burglary took place most of the evidence had already been gathered – moreover, on 24 October 1994 the investigating judge ordered the removal of the seals placed on the applicant's house (see paragraph 60 above).

**c) Conclusion**

111. To have been compatible with the Convention, the considerable length of the deprivation of liberty suffered by the applicant should have been based on particularly convincing justifications. But the above considerations show at the very least that the initial relevance of the grounds cited by the French courts investigating the offence for their decisions as to the continuation of the applicant's detention did not stand the test of time.

112. In short, through its excessive length, the detention in issue breached Article 5 § 3.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

113. Mr I.A. further complained of the length of the criminal proceedings against him and relied on Article 6 § 1 of the Convention, which provides:

> "In the determination of … any criminal charge against him, everyone is entitled to a … hearing within a reasonable time by [a] … tribunal…"

### A. Period to be taken into consideration

114. Those appearing before the Court agreed that the period to be taken into consideration began on the date when Mr I.A. was charged.

115. With regard to the end of the period concerned, the Court notes that, as Mr I.A. and the Delegate of the Commission pointed out – the Government not stating an opinion on this point – the proceedings have not yet ended since the Maine-et-Loire Assize Court's judgment of 20 March 1997 was quashed and annulled and the case remitted to the Loire-Atlantique Assize Court (see paragraph 80 above). To date, therefore, the proceedings have lasted approximately six years and nine months.

### B. Reasonableness of the length of the proceedings

116. The applicant submitted that, at best, he would be tried by the Loire-Atlantique Assize Court some time during the last three months of 1998, that is approximately seven years after being charged, and that such a lapse of time could not be described as "reasonable".

117. The Government maintained that the length of the proceedings was entirely attributable to the applicant's conduct during the investigation.

118. In its report of 10 September 1997 the Commission expressed the opinion, firstly, that the investigation had been conducted without interruption and had required numerous investigative measures including a number of expert reports, and secondly that by his numerous applications and requests for further investigative measures Mr I.A. had substantially contributed to prolonging the proceedings. It accordingly concluded that the length of the proceedings was not excessive.

At the hearing, however, the Delegate expressed the opinion that this question should be considered in the light of the recent "new turn" the case had taken and the "resulting increase" in the length of the proceedings.

119. The Court reiterates that the reasonableness of the length of proceedings is to be assessed in the light of the circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities (see, among many other authorities, the Kemmache judgment cited above, p. 27, § 60, and the Reinhardt and Slimane-Kaïd v. France judgment of 31 March 1998, *Reports of Judgments and Decisions* 1998-II, p. 662, § 97).

120. In the present case the stage of the proceedings subsequent to the judgment committing the applicant for trial (24 January 1996), as matters stand on the date of adoption of the present judgment, cannot be seriously criticised from the standpoint of Article 6 § 1: the Criminal Division of the Court of Cassation gave judgment as early as 25 June 1996 on the applicant's appeal on points of law against that judgment (see paragraph 77 above) and it was in response to an application from the applicant that, at the hearing on 11 December 1996, the Maine-et-Loire Assize Court adjourned the case to its next session (see paragraph 78 above); that court then gave judgment on 20 March 1997 (see paragraph 79 above) as the Criminal Division of the Court of Cassation did on 1 April 1998 (see paragraph 80 above).

121. It is the length of the preparatory investigation – more than four years and six months – which raises questions.

The conduct of the judicial authorities handling the investigation is not exempt from criticism. In that connection, the Court notes in particular that the late transmission of the case to the investigating judge at the Angers *tribunal de grande instance* slowed down the progress of the proceedings.

Nevertheless, the case was sufficiently complex "factually" to explain certain delays. In addition, although the applicant cannot be criticised for lodging applications for his release, however numerous these may have been, or for constantly denying that he had committed murder, he too substantially contributed to the protractedness of the investigation: firstly, the burglary of 4 May 1993 (see paragraph 40 above) entailed additional inquiries; secondly, a deliberate attempt by Mr I.A. to delay the investigation is evident from the file – one example being the fact that he

waited to be informed that communication of the file to the public prosecutor was imminent before requesting, on 19 July 1995, a number of additional investigative measures (see paragraph 65 above).

122. Having regard to the foregoing, and considering the proceedings as matters stand on the date of adoption of the present judgment, the Court concludes that there has been no breach of Article 6 § 1.

## III. APPLICATION OF ARTICLE 50 OF THE CONVENTION

123. Under Article 50 of the Convention,

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

### A. Pecuniary damage

124. The applicant submitted that his long detention had made him lose all his possessions and had deprived him of all sources of income; he claimed damages in the sum of 500,000 French francs (FRF).

125. The Government opposed this claim, arguing that it was not based on proof that the alleged loss had actually been sustained.

126. The Delegate of the Commission did not express an opinion.

127. The Court considers that, in the circumstances of the case, no compensation is required for any prejudice whatsoever.

### B. Costs and expenses

128. Mr I.A. claimed payment of the costs and expenses he had incurred before the French courts (FRF 50,000) and the Court (FRF 25,000).

129. The Government pointed out that the applicant had not submitted any documentary evidence of his costs and expenses before the domestic courts.

130. The Delegate of the Commission did not comment.

131. The Court, not having received any documentary evidence concerning the proceedings in France, awards Mr I.A. FRF 25,000 in reimbursement of the costs and expenses for the proceedings before it.

### C. Default interest

132. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 3.36% per annum.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a breach of Article 5 § 3 of the Convention;

2. *Holds* that there has been no breach of Article 6 § 1 of the Convention;

3. *Holds*
(a) that the respondent State is to pay the applicant, within three months, 25,000 (twenty-five thousand) French francs for costs and expenses;
(b) that simple interest at an annual rate of 3.36% shall be payable on the above sum from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 September 1998.

*Signed*: Rudolf BERNHARDT
President

*Signed*: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the concurring opinion of Mr Pettiti is annexed to this judgment.

*Initialled*: R. B.
*Initialled*: H. P.

# CONCURRING OPINION OF JUDGE PETTITI

(*Translation*)

I voted for the finding of a breach of Article 5 on account of the length of detention on remand but not of Article 6. The case before the French courts and the European Court of Human Rights involved exceptional circumstances: torture, murder and concealment of a body, the latter charge having been admitted.

It is understandable that judges dealing with a defendant who made constant attempts to impede the investigation should have conducted as many inquiries as they could to ensure that the truth was revealed and in order to send the most complete case file possible to the Assize Court. The judges carried out their task with full awareness of their duty, saving only the criticisms the Court makes in its judgment about the deficient reasoning of their decisions on the applications for release lodged by the applicant.

Account must be taken of the tactics of the accused, who constantly submitted applications for release and for additional investigative measures. This could be seen as a deliberate ploy to prolong the investigation with a view to obtaining his release, whereas the investigating judges had always considered that there was a risk he might abscond.

This conflict between protection of public order and the accused's determination to avoid being convicted thus resulted in a length of proceedings which has been adjudged not to have been unreasonable, since the Court must take into account the conduct of the applicant as much as that of the courts.