EUROPEAN COMMISSION ON HUMAN RIGHTS

Application No. 9299/81

Pierre PANNETIER

v.

SWITZERLAND

REPORT OF THE COMMISSION

(Adopted on 12 July 1985)

5.492
06.2

CONTENTS

APPENDICES

I. INTRODUCTION

1. The following contains a summary of the facts and a description of the proceedings.

(a) Summary of the facts and the applicant's complaints

2. The applicant, Pierre Pannetier, is a French national, was born in 1931, is a commercial representative and resides in Geneva. He is represented before the Commission by Mr Gérald Benoît of the Geneva Bar.

The Swiss Government is represented by its Agent, Mr Olivier Jacot-Guillarmod of the Federal Department of Justice.

3. The applicant was prosecuted by the Geneva authorities for having, in 1970, drawn up a false document, attesting to the use of a sum of 400,000 Swiss francs, invested by a third party, in setting up a «country club», which was never actually established. He was also charged with having forged royal decrees and agreements concerning the exclusive minting of bronze, silver and gold coins commemorating the coronation of an African king, with the intention of using these forged documents to damage the pecuniary interests of others. In February 1970, he had drawn up an agreement of association between two persons, guaranteeing him personal royalties and providing for the payment of a sum of money to cover concessionary rights stipulated in the forged documents. Finally, he was charged with having stolen a crate of cartons of milk, valued at 38 Swiss francs.

4. On 24 May 1972, the Indictments Chamber of the Canton of Geneva sent the applicant to the assize court, charging him with forging the documents, with being an accomplice to fraud and with theft.

The applicant appealed to the Court of Cassation against the decision committing him for trial. On 27 November 1972, the Cantonal Court of Cassation dismissed the appeal, but decided to refer the case to the public prosecutor's department so that the investigating judge could charge the applicant with being an accomplice to forgery.

On 30 June 1976, the investigating judge decided that the investigations were complete and sent the file to the public prosecutor's department. In a supplementary application dated 17 August 1977, the public prosecutor again asked the Indictments Chamber to commit the applicant for trial on the charge specified by the Cantonal Court of Cassation. The applicant was committed for trial on 12 October 1977.

5. In a public law appeal to the Federal Court on 19 March 1980, the applicant complained of the length of the proceedings. In a decision given on 26 June 1980, the Federal Court admitted that there had been some delays, but pointed out that the applicant had never intervened during the proceedings to request that they be expedited; he had also used all the remedies available to him - most of them unsuccessfully - and was thus in no position to blame the courts for the delays which had resulted from his having done so. It pointed out in any case that, once judgment had been given, the only sanction for delay available in Swiss law was limitation (Section 70 of the Criminal Code) or reduction of the sentence (Section 64 (5) of the Code). In the event of non-compliance with these Federal law provisions, the proper response was to apply to have the judgment set aside, and this meant that no public law appeal was possible and that the application based on the judgment's being out of time within the meaning of Article 6 of the Convention was inadmissible.

6. Before the Commission, the applicant complained of the length of the proceedings.

(b) Proceedings before the Commission

7. The present application was lodged with the Commission on 13 February and registered on 20 February 1981 under file No. 9299/81.

8. On 7 December 1982, the Commission decided to bring the application to the notice of the Swiss Government, inviting it to submit its observations on the admissibility and merits of the complaint concerning the length of the proceedings.

9. On 5 March 1983, the Commission decided, at the Swiss Government's request, to suspend examination of the application until the Federal Court had given judgment on two appeals brought by the applicant (a public law appeal and an application to have the judgment set aside).

10. The Swiss Government submitted its observations on 19 July 1983.

The applicant submitted his observations in reply, dated 21 September, on 28 September 1983.

11. On 13 March 1984, the Commission declared the application admissible in respect of the applicant's complaint concerning the length of the proceedings.

The text of the decision on admissibility was sent to the parties on 2 July 1984.

12. In a letter dated 14 July 1984, the Swiss Government submitted additional observations on the admissibility of the application and asked the Commission to reject it under Article 29 of the Convention.

The applicant was invited to submit his observations in reply. These observations, dated 19 September, reached the Commission on 25 September 1984.

13. On 6 October 1984, the Commission decided that there was no basis for application of Article 29, which required a unanimous decision by the Commission.

14. On the same day, it decided to invite the parties to submit their observations on the merits of the application.

In a letter dated 12 November 1984, the applicant told the Commission that he did not intend to avail himself of his right to submit additional observations on the merits of the application.

The Swiss Government's observations, dated 3 January 1985, reached the Commission on 7 January.

15. On 15 March 1985, the Commission postponed examination of the merits of the application.

On 7 May 1985, the Commission resumed examination of the case and deliberated on the merits.

16. In accordance with Article 28 (b) of the Convention, the Commission placed itself at the disposal of the parties with a view to securing a friendly settlement. In the light of the attitude adopted by the parties, the Commission finds that no basis for such a settlement exists.

(c) The present report

17. The present report has been drawn up by the Commission in accordance with Article 31 of the Convention, after deliberation and voting in plenary session, the following members being present:

MM C A NØRGAARD, President
G JORUNDSSON
G TENEKIDES
B KIERNAN
A S GOZUBUYUK
A WEITZEL
J F SOYER
H G SCHERMERS
H DANELIUS
G BATLINER
H VANDENBERGHE
Mrs H THUNE
Sir Basil Hall

18. The text of the report was adopted by the Commission on 12 July 1985 and will be sent to the Committee of Ministers in accordance with Article 31 (2) of the Convention.

19. Since a friendly settlement has not been reached, the purpose of this report, pursuant to Article 31 of the Convention, is accordingly:

1. to establish the facts, and

2. to state an opinion as to whether the facts found disclose a breach by the respondent Government of its obligations under the Convention.

20. Appended to this report are a schedule of proceedings before the Commission (Appendix I) and the text of the Commission's decision on admissibility (Appendix II).

The full text of the parties' written submissions and the documents lodged in evidence are held in the archives of the Commission and are available to the Committee of Ministers, if required.

II. ESTABLISHMENT OF THE FACTS

21. The applicant has already submitted two applications to the Commission (applications Nos. 8087/77 and 8738/79). The first concerned criminal proceedings brought against him in Geneva on a charge of helping to organise, in return for payment, a fraudulent game of cards in the course of which 1 million Swiss francs were lost. These proceedings began on 17 June 1974 and ended, after various appeals and incidents, on 24 January 1978, when the Federal Court declared the applicant's public law appeal inadmissible. The applicant cited several provisions of the Convention in support of his application, and particularly Article 5, paras. 1 (c), 2 and 3, and Articles 6 and 13. On 3 May 1978, the Commission declared the application inadmissible on the grounds that domestic remedies had not been exhausted, that it lacked jurisdiction ratione materiae and that the application was manifestly ill-founded.

22. The second application was also concerned with criminal proceedings in Geneva, in which the applicant was essentially charged with having forged, in 1970, a document attesting to the use of a sum of 400,000 Swiss francs, invested by a third party, for the establishment of a «country club». He was also charged with having drawn up «royal decrees» and agreements concerning the exclusive minting of bronze, silver and gold coins commemorating the coronation of an African king, intending to use these forged documents to damage the pecuniary interests of other persons. In February 1970, he was alleged to have drawn up an agreement on association between two persons, guaranteeing him personal royalties and providing for the payment of a sum of money to cover concessionary rights stipulated in these forged documents. Finally, he was charged with having stolen a crate of cartons of milk valued at 38 Swiss francs.

Before the Commission, the applicant complained that the Geneva Assize Court had failed to summon certain witnesses outside Switzerland and also of the length of the proceedings. He cited Article 6, paras. 1, 2 and 3 (d) of the Convention. On 5 March 1980, the Commission declared the application inadmissible on the ground that he had not exhausted domestic remedies.

23. The present case is concerned with the same criminal proceedings. The facts, as stated by the applicant, may be summarised as follows:

On 24 May 1974, the Geneva Cantonal Indictments Chamber committed the applicant for trial before the Assize Court on a charge of forgery, being an accomplice to fraud and theft.

(a) Procedural incidents attending the applicant's commital for trial

24. The applicant appealed to the Geneva Cantonal Court of Cassation on 24 May 1972 against this decision committing him for trial. On 27 November 1972, the Court of Cassation essentially dismissed the appeal, but referred the case to the public prosecutor so that he could instruct the investigating judge to charge the applicant with being an accomplice to forgery, which had been omitted.

On 30 January 1973, the Federal Court declared the applicant's public law appeal against the said decision inadmissible, holding that the decision itself was incidental and caused no irreparable damage.

On 30 June 1976, the investigating judge decided that the investigations were complete and sent the file to the public prosecutor. In a supplementary application dated 17 August 1977, the public prosecutor instructed the Indictments Chamber to commit the applicant for trial on a charge of being an accomplice to forgery.

At the hearing before the Indictments Chamber on 5 October 1977, the applicant requested that the case be referred back to the investigating judge so that further enquiries could be made, that proceedings under the forgery charge be terminated and the order of 24 May 1972 set aside, insofar as it committed him for trial before the Assize Court. On 12 October 1977, considering that the public prosecutor's application supplemented that received on 24 May 1972, the Indictments Chamber ordered committal of the applicant for trial before the Assize Court.

On 17 March 1978, the Geneva Court of Cassation dismissed an application by the applicant to have this decision set aside. On 9 June 1978, the Federal Court declared a public law appeal brought by the applicant inadmissible, since the decision complained of was incidental and caused him no irreparable damage.

(b) Procedural incidents attending the summons

25. On 26 February 1979, the applicant was summoned to appear before the Assize Court on 20 March 1979.

On 13 March 1979, the applicant lodged submissions, covering 92 pages, with the Assize Court registry. Essentially, he asked the Court to declare the summons void, to postpone the opening of the Assize Court session, to declare the selection of jurors by lot on 22 February 1979 invalid and, finally, to call a number of defence witnesses.

On 20 March 1979, the applicant and his counsel confirmed these submissions orally before the Assize Court. On that same day, the Assize Court dismissed the applicant's submissions concerning particular points and the president opened the session.

On 21 March 1979, the applicant appealed against this decision to the Court of Cassation and also lodged a public law appeal with the Federal Court against the summons and against the president's decision to open the hearing on 20 March 1979. He stated that he was restricting his public law appeal to the complaints concerning the problems posed by the search for witnesses.

On 26 March 1979, the Federal Court declared the appeal inadmissible, on the ground that cantonal remedies had not been exhausted.

(c) Judgment

26. In the meantime, on 24 March 1979, the Geneva Assize Court had sentenced the applicant to two and a half years' imprisonment and to 15 years' expulsion from Swiss territory for forgery, being an accomplice to forgery and fraud, and theft. The applicant appealed against this judgment to the Court of Cassation, and execution of the sentence was automatically suspended.

27. On 20 February 1980, the Geneva Cantonal Court of Cassation set aside the Assize Court's judgment of 24 March 1979 insofar as it made the applicant liable for civil costs, but otherwise upheld it in respect of the convictions and the nature and extent of the sentence. Respecting the principal sentence, it commented as follows:

«The penalty for each of the four offences in question is five years' imprisonment. Allowing for the plurality of offences covered by the case, the maximum sentence would have been seven and a half years' imprisonment (Sections 68 and 35 of the Criminal Code). It is therefore clear that the Assize Court did not exceed the legal maximum.

The Court of Cassation has always considered that it is not required to review the sentence - which results from the free assessment of the judge deciding on the merits - unless it is arbitrary, ie unduly severe or indulgent, and this is also the practice of the Federal Court (cf. Judgments of the Federal Court 97/IV/81 - Journal des Tribunaux 1972/IV/50 and 1973/IV/154).

The sentence of two and a half years' imprisonment imposed by the Assize Court is not arbitrary, even when allowance is made for the attenuating circumstance - admitted for the four offences - of the relatively long time which has elapsed since the offences and the appellant's good conduct in the meantime (Section 64 of the Criminal Code).»

28. Since the applicant had also complained before the Geneva Court of Cassation that he had not been judged within a reasonable time within the meaning of Article 6 (1) of the European Convention on Human Rights (ECHR) and argued that this should have deprived the court of the right to pass judgment, the Court of Cassation ruled that:

«Regardless of the fact - noted by the Assize Court - that the appellant himself is largely responsible for the delay, this argument is unfounded, since the rule in question carries no sanction but is an ethical principle which all the authorities responsible for administering justice should respect. Before it was included in the ECHR, this principle already existed as an obviously desirable line of conduct. The concept of 'reasonable time', as used in the ECHR, does not reduce the time-limits specified in the domestic law of the High Contracting Parties. The courts are entitled to pass judgment as long as criminal proceedings are not subject to limitation in domestic law: the ECHR has not stipulated that the right to pass judgment lapses if the 'reasonable time' (which it refrains - deliberately - from defining) is exceeded. Moreover, the ECHR came into force for Switzerland on 28 November 1974 (Recueil Officiel 0.101, p. 1): everything prior to that date is irrelevant.»

29. On 19 March 1980, the applicant lodged a public law appeal against this decision with the Federal Court and also applied to have the said decision set aside and the case referred back to the cantonal court for a fresh decision.

30. On 26 June 1980, the Federal Court dismissed the public law appeal. Regarding the applicant's complaints concerning the length of the proceedings, it commented as follows:

«It was not necessary to define the basis of the essential right to be judged within a reasonable time. The only necessity is to decide what sanction, if any, protects this right. The setting-aside of a belated judgment, as requested by the applicant, would produce the opposite effect of that required, since it would merely extend still further the time elapsing between the opening of the proceedings and the final judgment. Poncet ('La protection de l'accusé par la Convention européenne des droits de l'homme', p. 72) notes that, in continental legal systems, delay cannot be sanctioned by making criminal proceedings inadmissible. Except in cases where the right to prosecute lapses, he points out that the only way of compensating - imperfectly - for delay is to reduce the sentence or even to pay compensation, if the law so permits.

There is no point in considering whether the right to judgment within a reasonable time permits other sanctions during the proceedings, eg recourse to an authority supervising the judiciary, which would instruct the investigating and trial judges to expedite or even re-start the proceedings. In fact, the appellant never applied during the proceedings to have them expedited; on the contrary, he is himself largely responsible

for the delays of which he complains, since he missed no opportunity of seizing the remedies available to him. He cannot, of course, be blamed for using these remedies, most of them useless if not actually dilatory, but he is in no position to blame the court for the delays which resulted from his having done so. In any case, the only way in which delay by the cantonal authorities during the preliminary investigations can be sanctioned in Swiss Law, once judgment has been given, is via limitation within the meaning of Section 70 ff. of the Criminal Code or reduction of the sentence as prescribed in Section 64 (5) of the Criminal Code (1). However, the proper response if these Federal enactments are not respected is to apply to have the judgment set aside (Section 269 (1) of the Criminal Procedure Act), and this means that no public law appeal can be brought (Section 84 (2) of the Organisation of the Courts Act).

The application based on the judgment's being out of time within the meaning of Article 6 (1) of the ECHR is thus inadmissible.»

31. The Federal Court also rejected as unfounded the applicant's complaints concerning an alleged violation of Article 6, insofar as it guarantees the right to a fair hearing by an independent and impartial tribunal established by law, the right to be informed of the charges and the right to the hearing of defence witnesses, as well as his claim that expulsion would constitute inhuman and degrading treatment. The operative provisions of the judgment were communicated to the applicant on 1 July 1980, and the full text, giving reasons, was communicated to him on 20 August.

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(1) Section 64 (5) of the Criminal Code

«The court may reduce the sentence: when the offender has acted for honourable reasons, in a state of extreme distress, in the belief that he was seriously endangered or on the instructions of a person whom he is bound to obey or on whom he depends; when the victim's conduct has exposed him to severe temptation; when he has acted under the effect of anger or severe pain caused by unfair provocation or unjustified insult; when he has shown sincere repentance, particularly by making good the damage insofar as he can be expected to do so; when a relatively long time has passed since the offence and the offender has been of good behaviour in the meantime; when the offender was between the ages of 18 and 20 and was still unable fully to appreciate the unlawful nature of his action».

32. On 29 August 1980, the Criminal Court of Cassation of the Federal Court partly granted, insofar as it was admissible, the applicant's application to have the Geneva Cantonal Court of Cassation's judgment of 20 February 1980 set aside, but only in respect of his complaints concerning the principal sentence and the expulsion order. In this connection, the Court stated:

«The appellant is mistaken in complaining that Sections 64 and 65 of the Criminal Code have been misapplied... The Assize Court and later the cantonal Court considered that the fact that the offences had been committed a long time before justified a substantial reduction in the sentences, and thus indicated their intention of allowing for the extenuating circumstances... However, if one compares his sentence with those passed on his fellow-accused one is inevitably left with an uneasy feeling. The cantonal Court can, however, review the sentence when it comes to give a new decision under Section 277 ter of the Criminal Procedure Act.»

The applicant's conviction remained valid. The Court accordingly set the judgment aside and referred the case back to the cantonal Court for a new decision along the lines indicated in the introductory clauses.

33. In a decision given on 3 February 1981, the Geneva Cantonal Court of Cassation referred the case back to the Assize Court for a new decision along the lines indicated in the introductory section of the Federal Court's judgment, ie allowing for the fact that «concerning the sentence of two and a half years' imprisonment, the Federal Court recognises that the plurality of offences should be taken into account, but refers to what it has already said on the record, motives and personal situation of Pierre Pannetier». The Court adds that comparison with the sentences of the other accused leaves it with «an uneasy feeling. It will thus be for the cantonal Court to review the sentence in the new decision which it will give (Section 277 ter of the Criminal Procedure Act), allowing for another definite factor, ie the attenuating circumstance of the relatively long time which has passed since the offences (Section 64 of the Criminal Code), a circumstance already recognised by the Assize Court for the four offences.»

34. The applicant brought a public law appeal against this judgment before the Federal Court, applying to have it set aside and the case referred back to the Geneva Cantonal Court of Cassation, so that the latter could give a new decision, with different members, along the lines indicated in the introductory section of the Federal Court's judgment.

On 17 June 1981, the Federal Court rejected this appeal.

35. Following this judgment, the case was referred back to the Assize Court which, in a decision given on 20 October 1981, gave the applicant a suspended sentence of 18 months' imprisonment, put him on probation for five years and withdrew the expulsion order. In passing sentence, the Court recognised the time which had elapsed since the offences as an extenuating factor which, in its view, justified a substantial reduction in the sentences.

36. The applicant appealed against this judgment to the Geneva Cantonal Court of Cassation on 26 October 1981. His memorial in support of this appeal, running to approximately 70 pages, was submitted on 2 December 1981. In this he argued that the Assize Court lacked jurisdiction, that it had arbitrarily restricted its powers of discretion by refusing to reconsider the question of guilt and that he was not guilty on the charges brought against him.

37. By summons dated 14 January 1982, the registry of the Cantonal Court of Cassation scheduled the case for hearing on 25 January 1982. Noting that the court would consist of three judges who had given judgment on 20 February 1980, the applicant challenged them and requested that new judges be appointed to decide his appeal of 26 October 1981.

38. On 16 March 1982, the Geneva Cantonal Court of Cassation rejected this request, holding that there was no valid reason for challenging the judges.

On 13 April 1982, the applicant lodged a public law appeal against this judgment with the Federal Court, which dismissed it on 29 July 1982. The Court stated: «Insofar as they can be understood, the appellant's complaints do not stand up to objective examination.»

39. On 20 December 1982, the Geneva Cantonal Court of Cassation rejected the appeal brought by the applicant on 26 October 1981. In its judgment, the Court commented as follows:

«The appellant claims that various laws, including the Federal Constitution (Arts. 4 and 87), the Criminal Code, the Criminal Procedure Act, the Organisation of the Courts Act, the Civil Code, the Liabilities Code and Articles 6, 7 and 45 of the European Convention on Human Rights, have been violated. Section 30 of the Federal Organisation of the Courts Act states that 'illegible or prolix documents shall be returned to the person concerned, who shall be invited to re-draft them'. No such provision exists in the cantonal regulations governing the Court of Cassation, although it would have been useful in the present case since Pierre Pannetier's appeal is again all but illegible. The text is confused and hard to understand, and arguments, facts and law are jumbled together in such a way that the overall meaning can barely be grasped. It is often hard to see what the applicant means, and he has only himself to blame for a text which is almost completely lacking in order and sense.»

The Court then noted that most of the arguments advanced by the applicant had already been rejected in final judgments which could no longer be questioned. As for the extent of the sentence, it noted:

«The Cantonal Court of Cassation is not entitled to give a ruling on the extent of the sentence, but only on any violation of the law resulting from the sentence's not being that provided for in law ... in other words, from its being arbitrary, ie unduly lenient or severe.»

40. The applicant applied to have this judgment set aside and also brought a public law appeal against it in the Federal Court on 10 and 18 January 1983 respectively.

The public prosecutor was invited to comment on the applicant's applications and noted that «this torrent of argument is confused and inadmissible» (p. 4). «The arguments advanced are totally lacking in concision and clarity; indeed, one wonders whether the entire memorial should not be rejected for this reason» (p. 5). «These complaints are incorrect, and rhw second constitutes an affront to the dignity and honesty of the Genevan judiciary. Statements of this kind are the product of bad faith and disrespect, and would justify the imposition of a disciplinary fine on the appellant.»

41. On the question of «reasonable time», the Attorney-General notes that the applicant claims that Article 6 (1) of the European Convention on Human Rights has been violated. «The Federal Court has already rejected his argument in its decision of 26 June 1980 (pp. 7-9 of this judgment). The applicant has since persisted in his vexatious approach, using every remedy and delaying tactic available to him, and so cannot reasonably complain of the length of the criminal proceedings brought against him».

42. On 21 March 1983, the Federal Court declared the applicant's public law appeal inadmissible on the ground that he had failed to provide the security of 1,500 Swiss francs specified in Section 150 of the Organisation of the Courts Act.

In a judgment given on the same day, it rejected the application to have the earlier judgment set aside. It stated that:

«The Federal Court does not review the extent of the sentence (Section 63 of the Criminal Code) unless the cantonal Court has misread the law, has gone outside the law or has exceeded its discretion by giving a judgment which is clearly indefensible, being unreasonably severe or lenient. None of these conditions applies in this case. The Cantonal Assize Court has largely taken account of the Federal Court's uneasiness concerning the first sentence of two and a half years' imprisonment and expulsion for 15 years; it has reduced the sentence to 18 months and suspended it, and has decided not to expel the appellant - none of which indicates a misreading of the

law. Even if his motives, past record and personal circumstances are not entirely against him, the fact remains that Pannetier has been guilty of theft, forgery and being an accomplice to fraud and forgery, a combination of offences which would justify increasing the sentence (Section 68 of the Criminal Code). Proper allowance was made by the Cantonal Assize Court in the first judgment for the fact that a relatively long time had passed since the offences were committed (Section 64 of the Criminal Code); this was already acknowledged by the Federal Court in its judgment of 29 August 1980, and so there can be no going back on this point. Finally, Pannetier cannot claim that Article 6 (1) of the ECHR has been violated in this case, since a complaint of this kind can only be raised in a public law appeal (Judgments of the Federal Court 101 I a 69, introductory clause 2 c, 101 IV 253, introductory clause 1).»

III. SUBMISSIONS OF THE PARTIES

A. The applicant

43. The applicant refers entirely to his observations at the admissibility stage of the proceedings. These are reproduced below to facilitate assessment of the arguments put forward on both sides.

44. The applicant complains principally of the suspension of the proceedings from 27 November 1972 to 17 August 1977. He stresses that the hearing of the accused, which was itself completed in May 1973, was the only procedural step taken in the case during that period.

45. The Government explains the «paralysis of the proceedings» which set in after that date by the fact that further criminal proceedings were pending against the applicant.

The applicant considers that the existence of these proceedings was not sufficient to explain the suspension of the proceedings which the Commission is at present considering or to justify his having to wait until 24 March 1979 to be partly acquitted, until 22 August 1980 to be told that certain actions did not constitute an offence and until 21 March 1983 to be told that he would not be acquitted on the charges already brought against him.

46. Nor can his allegedly vexatious approach be used by the Government to justify the length of the proceedings. In fact, in the proceedings complained of, neither he nor his fellow-accused employed any remedy whatsoever between 30 January 1973 and 18 August 1977, the date on which the public prosecutor delivered his charges.

In conclusion, the applicant claims that it cannot be denied that the proceedings in this case lasted an unreasonably long time.

47. This being so, the Swiss Government cannot claim that the Swiss authorities «admitted in substance» that the Convention had been violated and then «made good or removed» this violation by allowing for the length of the proceedings and reducing his sentence accordingly.

48. In this connection, the applicant claims, first of all, that reduction of the sentence does not alter his status as a victim. He refers to the Court's decision in the case of Eckle v. the Federal Republic of Germany and argues that the national authorities must acknowledge that the Convention has been violated. However, the Swiss courts have denied that there has been a breach of the Convetnion, as can be seen from the Geneva Court of Cassation's decision of 20 February 1980.

49. For its part, the Federal Court of Cassation held in its judgment of 21 March 1983 that: «Finally, Pannetier cannot claim that Article 6 (1) of the ECHR has been violated in this case, since a complaint of this kind can only be raised in a public law appeal (Judgments of the Federal Court 101 Ia, introductory clause, 101 IV 236, introductory clause 1).»

50. In support of his argument, the applicant also states that the sentence was reduced under Section 64 of the Swiss Criminal Code and not under the Convention. This is no merely formal distinction, since Section 64 makes reduction of sentence dependent on a series of conditions which have nothing to do with the principle laid down in Article 6 (1) of the Convention, stipulating, for example, that the accused must have been of good bebaviour since committing the offence.

51. Finally, the applicant points out that the fixing of sentence lies outisde the competence of the Federal Court, which is thus unable to establish shether the Convention has been respected.

52. In the present case, the reduction of sentence accorded because of the unreasonable length of the proceedings must be open to measurement. However, the judgment of the Federal Criminal Court of Cassation took account only of the criteria laid down in Section 63 of the Swiss Criminal Code.

B. The Government

53. The Swiss Government first pointed out that other criminal and administrative proceedings had followed the proceedings complained of by the applicant and had further impeded their progress, which had already been slowed down by the vexatious nature of some of his applications to the Swiss courts.

The applicant had, for example, been involved in administrative proceedings concerning an order banning him from entering Switzerland, against which he had appealed to the Federal Justice and Police Department, which rejected his application on 8 November 1973. His application for review was also dismissed on 10 July 1974. On 11 October 1974, a further application to the Federal Department was also rejected. Finally, an application to the Federal Council was dismissed on 19 February 1975.

54. On 7 November 1975, further proceedings (No. 3709/75) were brought against him on suspicion of planning offences to be carried out by criminals from France. A police report of 22 December 1975 was followed by a further report on 11 May 1976, containing records of the interrogation of various persons, including Pannetier, who was questioned on 6 April 1976. A police report of 9 July 1976 detailed the outcome of certain investigations into the applicant's activities. These proceedings were notified on 13 September 1976 and discontinued on 18 October 1976, as far as the applicant was concerned. They had, however, brought to light certain facts which gave rise to further investigations.

55. Specifically, these facts related to a complaint concerning a fraudulent game of cards, brought on 5 May 1976 by Mr X, who had lost 1 million francs. Ultimately, no charges were brought against the applicant

The plaintiff was interrogated on 14 June 1976. Application was made in Neuchâtel on 16 August 1976 for the taking of evidence on commission from two accused persons, who were in prison and who had helped to prepetrate the fraud.

56. Enquiries were conducted in Basel in November and December 1976.

On 12 April 1977, the police in Geneva reported on the investigations carried out in an effort to identify the persons involved in the fraud, who had used assumed names. A further police report of 17 June 1977 referred to additional hearings in the case.

57. The applicant was arrested on that day and subjected to lengthy interrogation on 22 June 1977.

He was again questioned on 23 June 1977. On 24 June 1977, a further search was made at his home.

On 29 June 1977, the investigating judge asked the applicant's wife for information on various points. She and her husband were again questioned by the investigating judge on 27 July 1977.

58. On 21 October 1977, the Indictments Chamber ordered the applicant's release on bail of 20,000 Swiss francs. He left prison on 24 November 1977.

59. Ultimately, proceedings Nos. 3709/75 and 2936/76 were discontinued, and this is why additional charges of being an accomplice to forgery were brought against the applicant on 17 August 1977 on the strength of the supplementary enquiries ordered by the Indictments Chamber on 24 May 1972 in the proceedings before the Commission.

60. The Swiss Government also makes the following points:

a. Regarding «the manner in which the case was handled by the judicial authorities and national courts», the Swiss Government stresses that both the Cantonal Assize Court and the Federal Court allowed, in their decisions, for the fact that a «relatively long» time had passed since the offences laid to the applicant's charge in the Swiss courts. The comments of the Swiss courts show that they tried, in fixing the sentence, to compensate the applicant (under Section 64 of the Swiss Criminal Code) for the inconvenience caused him by the length of the proceedings.

b. Finally, regarding «the applicant's own conduct», the Swiss Government again points out that most of the procedural delays were the result of entirely dilatory applications made by the applicant. Bearing in mind the points made by the Court in its judgment of 15 July 1982 in the Eckle case (European Court of Human Rights, Eckle judgment of 15 July 1982, Series A, No. 51, para. 82), the Swiss Government draws the Commission's attention to the aforesaid statement made on this point by the Public Prosecutor of the Canton of Geneva on 30 March 1984.

61. The Swiss Government also abides entirely by what it said, regarding the applicant's not being a «victim», in its observations on admissibility.

62. The decisive point here is whether the applicant, as the alleged «victim» within the meaning of Article 25 of the Convention, suffered damage as a result of the length of the proceedings.

It is true that the Court ruled (in the Eckle judgment, para. 66) that a person may be a «victim» even if he has suffered no damage, and that reduction of sentence because proceedings have been unduly long does not therefore mean that he ceases to be a «victim», but it added that it did not «exclude that this general rule might be subject to an exception when the national authorities have acknowledged either expressly or in substance, and then afforded redress for, the breach of the Convention» (same judgment, p. 30, para. 66).

63. The Swiss Government believes that this is such a case. In fact, in no less than five decisions affecting the applicant, the courts took the length of the proceedings into account and reduced the sentence considerably, In so doing, it applied Section 64 of the Swiss Criminal Code, which states that the court may reduce the sentence «when a relatively long time has passed since the offence and the offender has been of good behaviour in the meantime.» The decisions concerned were the following:

- judgment of the Geneva Assize Court of 24 March 1979 (pp. 22-23);
- judgment of the Criminal Court of Cassation of the Swiss Federal Court of 26 June 1980 (introductory clause 3, pp. 7-9);
- judgment of the Geneva Assize Court of 20 October 1981 (pp. 7-9 and, above all, pp. 14-17);
- judgment of the Geneva Court of Cassation of 20 December 1982 (p. 9);
- judgment of the Criminal Court of Cassation of the Swiss Federal Court of 21 March 1983 (proceedings Str. 25/83, introductory clause 5, pp. 5-6).

64. In this connection, the Swiss Government draws the Commission's attention to the reasons given for the aforesaid judgment of 21 March 1983 of the Criminal Court of Cassation of the Federal Court.

65. Referring to these reasons, the Swiss Government considers that the Swiss authorities acknowledged, within the meaning of the Eckle judgment, if not expressly at least in substance, that the Convention had been violated, and then afforded redress or at least removed all danger of a breach of Article 6 (1) resulting from the length of the proceedings. Since the applicant benefited directly, receiving a substantial reduction in his sentence, he can no longer claim before the Commission to be a «victim» within the meaning of Article 25. The Swiss Government thinks it significant here that the applicant never claims in his application to have suffered damage: this confirms it in its view that, in the present case, enjoyment of the rights and freedoms enshrined in the Convention was fully guaranteed at national level, in the manner required by the supervisory system for the Convention. With the Court, the Swiss Government concludes:

«In such circumstances, to duplicate the domestic process with proceedings before the Commission would appear hardly compatible with the subsidiary character of the machinery of protection established by the Convention. The Convention leaves to each Contracting State, in the first place, the task of securing the enjoyment of the rights and freedoms it enshrines (see especially the judgment of 23 July 1968 on the merits of the «Belgian Linguistic» case, Series A No. 6, p. 35, para. 10 in fine, and the Handyside judgment of 7 December 1976, Series A No. 24, p. 22, para. 48). This subsidiary character is all the more pronounced in the case of States which have incorporated the Convention into their domestic legal order and which treat the rules of the Convention as directly applicable (see the Van Droogenbroeck judgment of 24 June 1982, Series A No. 50, para. 55).»

66. The Swiss Government finds further confirmation of its view in the decision given by the Commission on 16 October 1980 in the case of X. v. the Federal Republic of Germany (Dec. No. 8182/78, 16 October 1980, D.R. 25, p. 142):

«However, the Commission notes that the length of proceedings was considered as a mitigating factor in both proceedings and again in the proceedings before the Regional Court of Munich on the formation of a global sentence. This factor led to a substantial reduction of the sentences eventually imposed, and the Commission considers that the redress thereby obtained for the excessive length of the proceedings in question is appropriate and sufficient.»

67. It is significant that the Commission concluded in that case that the applicant had ceased to be a «victim» within the meaning of Article 25 of the Convention and accordingly rejected the application as being manifestly ill-founded.

68. It is also true that, in the Eckle judgment, the European Court of Human Rights seems to have attached some importance to the fact that none of the German courts concerned had expressly acknowledged that Article 6 (1) of the Convention had been violated. The Court further noted that: «As the Convention forms an integral part of the law of the Federal Republic of Germany, there was nothing to prevent the courts of the country from holding, if appropriate, that the Convention and, in particular, Article 6 (1) had been breached» (same judgment, para. 67; cf. also paragraphs 68-70 and paragraphs 94-95).

69. In the present case, it is true that none of the Swiss courts concerned expressly acknowledged a breach of Article 6 (1) of the Convention. The Swiss Government nonetheless considers that the terms used by the Swiss courts are tantamount to such acknowledgement (cf. para. 69 of the Eckle judgment).

70. The Swiss Government accordingly invites the European Commission of Human Rights to find

- principally that the preliminary argument derived by the Swiss Government from the applicant's not being a «victim» must be admitted, since the Swiss courts used domestic means to redress the alleged wrong within the Swiss legal system;

- consequently or, if appropriate, secondarily, that Switzerland did not violate Article 6 (1) of the Convention by reason of the length of the criminal proceedings brought against Mr Pannetier.

IV. OPINION OF THE COMMISSION

71. The only point at issue at the present stage of the proceedings is whether judgment was given on the criminal charges against the applicant «within a reasonable time», as required by Article 6 (1) of the Convention.

However, before considering this question, the Commission must first decide whether the applicant has been the victim of a breach of the Convention within the meaning of Article 25.

72. Throughout the proceedings before the Commission, the Government has argued that the applicant cannot in this case be regarded as a victim within the meaning of Article 25.

It holds that the Swiss courts implicitly recognised that the length of the proceedings had been excessive and took steps to remedy this.

The applicant denies that this is so.

73. The Commission notes that the Court has previously ruled that «mitigation of sentence ... granted on account of the excessive length of proceedings (does) not in principle deprive the individual concerned of his status as a victim within the meaning of Article 25 ...; the Court does not exclude that this general rule might be subject to an exception when the national authorities have acknowledged either expressly or in substance, and then afforded redress for, the breach of the Convention ... In such circumstances, to duplicate the domestic process with proceedings before the Commission and the Court would appear hardly compatible with the subsidiary character of the machinery of protection established by the Convention .... This subsidiary character is all the more pronounced in the case of states which have incorporated the Convention into their domestic legal order and which treat the rules of the Convention as directly applicable (see the Van Droogenbroeck judgment of 24 June 1982, Series A, No. 50, para. 55)» (European Court of Human Rights, Eckle case, judgment of 15 July 1982, para. 66).

74. Since this is the case in Switzerland, the Commission must therefore determine whether the Swiss courts found in this instance that there had been a breach of Article 6 (1) of the Convention and, if they so found, whether they afforded adequate redress.

75. In this connection, the Commission points out that the Geneva Court of Cassation noted that the right to judgment within a reasonable time was a rule which «carries no sanctions but (which) is an ethical principle which all the authorities responsible for administering justice should respect.» The Swiss Federal Court added that «the only way in which delay by the cantonal authorities during the preliminary investigations can be sanctioned in Swiss law, once judgment has been given, is via limitation within the meaning of Section 70 ff. of the Criminal Code or reduction of the sentence as prescribed in Section 64 (5) of the Criminal Code». These statements show that there is no provision in Swiss law under which allowance can specifically be made for any excessive delay occurring in the course of the proceedings.

76. The Commission notes, however, that the Swiss courts admitted on several occasions that considerable delays had occurred in this case and pointed out that the only sanction currently available in Swiss law for such delays was reduction of the sentence under Section 64 (5) of the Criminal Code.

77. The Commission also notes that the applicant was liable, if convicted on the charges brought against him, to sever and a half years' imprisonment. Allowing for various attenuating circumstances, including the time which had elapsed since the offences, he was sentenced to two and a half years' imprisonment at first instance and was also expelled from Swiss territory for a period of fifteen years.

78. Having brought various appea;s in the meantime, he was eventually given a suspended sentence of 18 months' imprisonment, and the expulsion order was also withdrawn.

79. The point at issue is thus whether the reduction of sentence just noted constitutes sufficient redress, having regard to the duration of the alleged violation, and whether the applicant can still claim to be the victim of a breach of Article 6 (1) of the Convention.

80. The Commission notes that the proceedings began, at the latest, on 24 May 1972, when the Geneva Cantonal Indictments Chamber sent the applicant for trial before the Assize Court, charged with forgery, being an accomplice to fraud and theft.

They ended on 21 March 1983, when the Federal Court declared that the applicant's public law appeal was inadmissible and dismissed his application to have the Cantonal Court of Cassation's judgment of 20 December 1982 set aside.

The proceedings thus lasted for approximately 10 years and seven months.

81. The Commission notes that the disputed periods during these proceedings were those between:

- 14 May 1973, when the investigating judge questioned the accused persons for the last time, and 30 June 1976, when he sent the file to the Public Prosecutor's Department, ie a period of approximately three years;

- 30 June 1976 and 17 August 1977, when the public prosecutor instructed the Indictments Chamber to recommit the applicant for trial, ie a period of more than one year.

82. The Government has explained that the interruption of the proceedings, particularly between 14 March 1973 and 30 June 1976, was due to the fact that the Genevan cantonal authorities were also investigating other charges against the applicant.

83. However, as far as the Commission is concerned, the Government has failed to establish that these proceedings were connected otherwise than by the simple fact that they all concerned the applicant. Thus the Government has not claimed that identity of facts, similarity of evidence, or criminal intention or other factors justified combining the proceedings.

84. It is also true, of course, that, in the proceedings of which he is now complaining and in other proceedings brought against him by the Geneva cantonal authorities, the applicant used all the remedies available to him, some of which were dilatory in character.

85. It remains true, of course, that, in the proceedings brought against the applicant were suspended from 14 May 1973, when the investigating judge conducted his final hearing in this case, and 30 June 1976, when he sent the file to the public prosecutor, ie for a period of approximately three years. As a result, the proceedings underwent a delay for which the applicant cannot be blamed.

86. The Commission notes, however, that on conclusion of the proceedings the Swiss authorities took account of the time which had elapsed since the bringing of charges, reduced the applicant's sentence to 18 months' imprisonment (suspended), instead of the two and a half years' imprisonment to which he had been sentenced at first instance, and also decided not to enforce the penalty of fifteen years' expulsion from Swiss territory.

CONCLUSION

87. In view of these various elements, the Commission considers that the Swiss authorities implicitly acknowledged and in substance afforded redress for any damage suffered by the applicant owing to the length of the proceedings. The Commission is not therefore required to decide whether there has been a breach of Article 6 (1) of the Convention in this case and concludes, by eleven votes with two abstentions, that the applicant cannot claim to be the victim, within the meaning of Article 25 of the Convention, of a violation by Switzerland of the rights enshrined in Article 6 (1).

The Secretary of the Commission — The President of the Commission

(H C KRUGER) — (C A NØRGAARD)