

*(TRANSLATION)*

**THE FACTS**

The facts of the case, as submitted by the parties and not disputed, may be summarised as follows.

The applicant, S., born in 1950 at Libercourt, was a French national at the time of his birth by virtue of the fact that both his parents had been born in a district ("département") of Algeria, under French administration at the time, and had French civil status under local law. He is currently under detention at Lantin (Belgium) and is represented before the Commission by Ms. Nathalie Carrère, a lawyer practising in Paris.

Following his conviction in Belgium for aggravated theft, the applicant escaped from the prison at Namur, where he was serving a 15-year sentence of imprisonment, and took refuge in France.

Having been arrested on 22 September 1979 and prosecuted for forgery, use of forged documents and falsification of cheques, the applicant was sentenced by the Douai Court of Appeal to a term of imprisonment which ended on 6 December 1981.

In the meantime, on 6 December 1979, a Belgian request for extradition had been served on him and he had been placed under arrest pending extradition.

In the context of the extradition proceedings, the applicant appeared before the Indictments Chamber of the Montpellier Court of Appeal on 10 June 1980, when he opposed the extradition request, relying on his French nationality.

The Indictments Chamber reserved judgment on 17 June 1980 and invited the applicant to prove his assertion before the competent civil courts.

On 15 July 1980, the applicant submitted to the Regional Court (tribunal de grande instance) a claim intended to establish his French nationality.

When this claim was dismissed, the applicant appealed to the Montpellier Court of Appeal, which upheld the first instance judgment on 1 June 1982.

The applicant appealed on 16 December 1982, and the Court of Cassation rejected the appeal on 6 March 1984. The competent courts found that he had lost his French nationality on 1 January 1963 by virtue of the special provision of Section 1 (2) of the Law of 20 December 1966.

During the course of the proceedings initiated for this purpose, the applicant — who since 6 December 1981 had been held in detention only with a view to his extradition — submitted several applications for release, relying on Section 14 of the Law of 10 March 1927, under which "he [the person concerned] may be released at any stage of the proceedings, in accordance with the rules governing the matter".

The Indictments Chamber of the Montpellier Court of Appeal rejected all the applicant's applications on the ground that he offered no serious guarantee of appearance for trial. The judgments on this subject were dated 24 December 1981, 18 March 1982, 6 August 1982, 28 September 1982, 22 October 1982, 24 November 1982, 5 January 1983, 2 February 1983, 1 March 1983, 1 April 1983, 20 December 1983, 27 December 1983, 11 January 1984, 24 January 1984, 31 January 1984, 7 February 1984, 28 February 1984 and 13 March 1984.

With regard to the application for release submitted on 25 October 1982, which was examined at a hearing on 23 November 1982 and rejected in a judgment of 24 November 1982, the applicant appealed to the Court of Cassation but did not submit any document establishing the date of the appeal and the complaints raised.

Following the termination, on 6 March 1984, of the civil action which had interrupted the course of the extradition proceedings, the hearing on the extradition proceedings was resumed on 26 April 1984.

On 17 May 1984, the Indictments Chamber of the Montpellier Court of Appeal approved the applicant's extradition.

On 25 June 1984, he was placed at the disposal of the Belgian authorities by means of an extradition order issued by the Prime Minister, which was notified to the applicant on 15 July 1984 and to the Belgian authorities on 31 July 1984.

On 15 August 1984, the applicant requested his release on the basis of Section 18 of the Law of 10 March 1927, under which: "If, within one month from the date of the notification of this instrument [the decree authorising extradition], the extradited person has not been received by the officials of the requesting power, he shall be released and his extradition may no longer be demanded on the same grounds." In this connection, he applied to the director of the prison, a bailiff, a lawyer and the dean of the investigating judges. He received no reply and was extradited to Belgium on 23 August 1984.

## **COMPLAINTS (Extract)**

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He [also] complains of the excessive length of his detention which, from 6 December 1981, had no justification other than the request for extradition of which he was the subject. In this regard, he alleges a violation of Article 5 para. 3 of the Convention.

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## THE LAW (Extract)

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2. The applicant complains [further] of the excessive length of his detention pending extradition and alleges a violation of Article 5 para. 3 of the Convention. The Commission will, however, examine this complaint under Article 5 para. 1 (f), under which:

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

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

On this point, the Government plead inadmissibility on the ground of non-exhaustion of domestic remedies, inasmuch as the applicant neither appealed to the Court of Cassation against the whole array of judgments rejecting his applications for release nor lodged a claim for compensation with the domestic courts.

As regards the first objection to admissibility raised by the Government concerning the exhaustion of domestic remedies, the applicant has admitted that he did not appeal to the Court of Cassation against all the judgments of the Indictments Chamber rejecting his applications for release.

The Commission has, however, already concluded that an applicant who had unsuccessfully submitted complaints and did not renew such complaints was relieved of his obligations under Article 26 of the Convention (cf. No. 5613/72, Dec. 5.3.76, D.R. 4 p. 177).

It considered in another case that “it would be excessively formalistic to expect the applicant ... to have appealed twice to the Court of Cassation — once concerning an application for bail, and again concerning an application for final release on expiry of the maximum period” (cf. No. 7438/76, Dec. 9.3.78, D.R. 12 pp. 38, 46).

The Commission concludes in the present case that it was not necessary for the applicant to appeal to the Court of Cassation against all the judgments of the Indictments Chamber refusing his release.

Consequently, the objection cannot be accepted.

The Government also claim that the applicant did not use the remedy available under Section L781.1 of the Administration of Justice Act which, under French law, makes it possible to claim damages from the State in respect of the defective operation of the administration of justice.

The Commission recalls that it has examined this possibility afforded by French law, in particular in the case of *Woukam Moudefo v. France* (No. 10868/84, Dec. 21.1.87, D.R. 51 pp. 62, 81).

The Commission considered "that an action for damages against the State founded on the defective operation of the administration of justice is intended to obtain compensation for damage resulting from detention and not to obtain release from detention ... therefore ... the fact that an applicant who complains of the excessive length of his detention on remand has not instituted such an action has no bearing on the question of exhaustion of domestic remedies".

The Commission considers therefore that, in the present case, the applicant was not obliged to resort to this procedure in order to exhaust the domestic remedies.

The objection cannot therefore be accepted.

As to the merits, the Commission recalls that, if the extradition proceedings are not conducted with the requisite diligence or if the continued detention is due to an abuse of authority, that detention ceases to be justified under Article 5 para. 1 (f) (cf. No. 7317/75, Dec. 6.10.76, D.R. 6 p. 141 and No. 9172/80, Dec. 17.12.81, D.R. 27 p. 222).

In this case the applicant, having been arrested on 22 September 1979, first served a sentence imposed by a French court, which ended on 6 December 1981, this period of detention being covered by Article 5 para. 1 (a). The period during which the applicant was detained solely for extradition purposes thus begins on 6 December 1981 and ends on 23 August 1984, the date on which the applicant was handed over to the Belgian authorities, so that it lasted two years and eight months.

The Government, for their part, rely on the complexity of the case and the conduct of the applicant.

With regard to the total duration of the extradition proceedings as such, the Commission notes that there is no evidence in the file to suggest that they were not conducted with the necessary diligence.

These proceedings were interrupted following the applicant's declarations concerning his nationality. However, the Commission does not find any delay in the conduct of the proceedings before the civil courts in connection with the question of nationality. It observes that these proceedings passed through three levels of jurisdiction.

In the light of all these facts, the Commission considers that no violation of Article 5 para. 1 (f) can be detected in this case in connection with the length of the applicant's detention for extradition purposes.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 27 para. 3 of the Convention.

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