(TRANSLATION)

THE FACTS

The applicant, Gabriel Woukam Moudefo, is a Cameroon national who was born in 1951 and now resides in Cameroon.

He is represented before the Commission by Michel and Françoise Akli, lawyers practising in Pontoise.

On 28 March 1980 an armed attack on a bank in St. Brice was carried out by five persons who succeeded in escaping after opening fire on the police officers who were trying to intercept them. A witness noticed the presence of a coloured man among the fugitives.

On 16 April 1980 another armed attack took place, on a bank in Lille. On this occasion the six perpetrators were apprehended after wounding three police officers. Of the six persons in question, two accused the applicant of being one of the participants in the first hold-up committed on 28 March at St. Brice.

The applicant was arrested by the police on 1 October 1980 and placed in police custody. At the end of the period of police custody, on 3 October 1980, he was placed in detention on remand on a charge of armed robbery and attempted murder.

On 19 December 1980 the investigating judge dismissed an application submitted by the applicant for his provisional release.

On 23 February 1981 the judge dismissed a further application for release.

On 24 February 1981, three and a half months after his arrest, the applicant was examined by the investigating judge. He denied any participation in the acts of which he was accused.

On 22 May 1981 a further application for provisional release was dismissed on the grounds that the criminal acts of which the applicant was accused had seriously disturbed public order and that the accused, who had previous convictions, offered no guarantee of his appearance before the competent bodies, whereas enquiries were being pursued and further measures of investigation were necessary.

An application for provisional release submitted on 22 June 1981 by the applicant was also dismissed on 23 June 1981 for the same reasons.

An application for provisional release submitted directly to the Indictments Chamber pursuant to Article 148-4 of the Code of Criminal Procedure was dismissed by an order of 3 July 1981 as inadmissible because it had been submitted prematurely, namely less than four months after the applicant's examination by the investigating judge.

On 10 July 1981 the investigating judge again dismissed an application for release, again for the same reasons.

The applicant appealed against this order claiming that, with the exception of his examination by the investigating judge on 24 February 1981, no other measure of investigation had been carried out. He noted in particular that the persons giving evidence against him had neither been examined by the judge nor confronted with him nor even summoned to appear, and that the judge's instruction to the police had still not produced results. The applicant stated in addition that upon his release he would have a fixed address and means of support and that he undertook to appear at all the stages of the investigation or the proceedings.

By an order of 13 August 1981, the Indictments Chamber of the Versailles Court of Appeal upheld the investigating judge's order of 10 July 1981 refusing his release. In its order the Indictments Chamber ruled *inter alia* as follows:

> "In his submissions Counsel for the accused argued in the first place that there was not a sufficient indication of the accused's guilt, and that moreover the measures required to establish the truth had not yet been carried out, in particular the examination of his accusers.
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> This submission which goes to the substance of the case cannot be accepted since in these proceedings the Indictments Chamber may only consider the application regarding his detention. It is sufficient to note that serious charges have already been laid against Woukam and that they require additional verification, as moreover his Counsel has acknowledged."

On 18 December 1981 another application for provisional release was dismissed by the investigating judge.

Under Article 196-I (2) and (3) of the Code of Criminal Procedure (Act of 2 February 1981), if the investigation is not completed at the end of a period of one year from when the first charge is laid, the file must be transmitted to the President of the Indictments Chamber who makes an order, in which no reasons are stated and from which no appeal lies, requiring the continuation of the investigation or transferring the proceedings to the Indictments Chamber. Relying on this provision the applicant requested the transfer of the proceedings to the Indictments Chamber.

This application was dismissed by an order of the President of the Indictments Chamber of 24 February 1982 and the file was sent back to the competent investigating judge for the continuation of the investigation.

On 25 March 1982 counsel for the applicant submitted a further application for provisional release to the investigating judge, based expressly on Articles 5 and 6

of the Convention. This application was dismissed by an order of 2 April 1982 on the following grounds:

> "The applicant is accused of serious offences. He is a foreign national without a personal address in France and was unemployed at the time of his arrest. He can provide no guarantee that he will appear before the competent bodies, he has previous convictions and joint culprits or accomplices are still at large. It is to be feared that he will seek to avoid trial."

The applicant appealed against this order, arguing through his counsel that by not releasing him and not committing him for trial, the decision refusing his provisional release and the measures taken had contravened the European Convention on Human Rights and in particular Articles 1 to 5 and Article 6 para. 1.

By an order dated 27 April 1982, the Indictments Chamber of the Versailles Court of Appeal dismissed the appeal lodged by the applicant against the order refusing his release dated 2 April 1982.

The Court of Appeal noted *inter alia* in its judgment that as yet no confrontation of witnesses had been organised, since the two persons summoned by the investigating judge for 19 January 1982 had not appeared, and that, of the other presumed perpetrators of the offence of which the applicant was accused, only one had been charged under an instruction issued on 24 March 1982, although he had not yet been questioned by the investigating judge. The Indictments Chamber also took the view that the investigation should be continued in order to identify, locate and examine all the participants in the events and to determine the role of each person involved. It considered that it was indispensable to organise confrontations not only between the applicant and those in whom he had confided, but also between the applicant and the employees and clients of the bank and between the applicant and his presumed fellow-culprits and accomplices.

Finally, on the alleged breach of the Convention, the Indictments Chamber took the view that the proceedings relating to the applicant's charging and detention on remand had been conducted in accordance with the provisions of the Code of Criminal Procedure and had not infringed the European Convention on Human Rights. Moreover, it considered that he had been able to make his submissions, organise his defence and, in particular, submit applications for provisional release, which had been lawfully determined. Finally he had been able to, and could still, avail himself of any remedy which he considered appropriate. Accordingly the submission based on the violation of the Convention was unfounded.

The applicant appealed against the decision of the Indictments Chamber of 27 April 1982. He did not personally submit additional pleadings and was not represented by a lawyer despite a request to be so represented. As a result, by an order of 4 June 1982, the Court of Cassation simply dismissed his appeal on the grounds

that no submission had been made to support it and that the contested decision satisfied the procedural requirements and provided a sufficient statement of grounds in relation to the facts of the case.

By letter of 24 May 1982 the applicant applied directly to the Indictments Chamber for his release. He again relied on the Convention and on Article 148-4 of the Code of Criminal Procedure, which provides that such an application may be laid before the Indictments Chamber at the end of a period of four months following the accused's last appearance before the investigating judge providing that no order terminating the investigation has been made.

By a decision delivered on 8 June 1982, the Indictments Chamber noted in the first place that the applicant had been charged on 3 October 1980, questioned on 24 February 1981 and transferred twice to Lille for questioning by the judge assigned to investigate the hold-up committed in that town. His last interrogation had been on 19 January 1982 and had been intended to include a confrontation between him and two witnesses, who failed to appear. It followed that the application for provisional release submitted by the applicant was admissible inasmuch as the applicant had not appeared before the investigating judge since 19 January 1982 and, in any event, for more than four months. As to the merits, the Indictments Chamber set out the following grounds for its dismissal of the applicant's application for provisional release:

> "The detention on remand of the accused is necessary to ensure that he remains available to the investigating judge since, precisely because of Woukam's denials, further investigation and additional confrontations appear necessary. It is important to prevent any pressure on witnesses and any unlawful collusion with culprits or accomplices who are still at large.
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> The provisions of the European Convention on Human Rights do not apply since the accused's detention on remand is justified on the facts of the case inasmuch as it is a criminal case and its complexity and the number of accused detained or culprits still at large make it impossible to conclude the investigation more rapidly."

The applicant did not appeal against this decision but on 21 December 1982 submitted a further application for provisional release to the Indictments Chamber of the Versailles Court of Appeal. As for the two previous appeals, he relied on an alleged infringement of the Convention.

By an order of 4 January 1983, after having established that the applicant had not appeared before the investigating judge since 19 January 1982, in other words for almost a year, the Indictments Chamber again dismissed the applicant's application for provisional release. On the question of the alleged infringement of the

Convention, the Indictments Chamber took the view on this occasion that the principle enshrined in the European Convention was guaranteed by the Code of Criminal Procedure under whose provisions any accused person could organise his defence, enforce his rights and avail himself of any remedy against detention on remand.

By a letter of 7 January 1983 the applicant requested the President of the Bar Association of the Conseil d'Etat and the Court of Cassation to appoint a lawyer to conduct the appeal which he intended to lodge against the decision of the Versailles Indictments Chamber of 4 January 1983.

By a letter of 13 January 1983 the President drew the applicant's attention to the fact that in criminal proceedings the accused was not obliged to be represented by a lawyer and could plead his appeal in person, that legal aid was granted, if at all, only to the party claiming damages and not to the accused and that, finally, questions of public order were raised by the Criminal Chamber of the Court of Cassation of its own motion.

The President stated nevertheless that he was anxious to protect the applicant's interests in the event of a mistake in law and advised the applicant that he had instructed a lawyer of the Court of Cassation Bar to examine the file and that he would appoint a lawyer to act for the applicant if it were found that a genuine ground for appeal existed.

On 3 February 1983 the applicant lodged in support of his appeal written pleadings which he had formulated himself and in which he expressly alleged infringement of Articles 1 to 6 of the Convention, with particular reference to Article 6 para. 1 thereof.

More specifically the applicant complained of the protracted nature of the proceedings and that the length of his detention was not justified in view of the fact that no measure of investigation of any practical value had been carried out since he had been charged on 3 October 1980. Moreover, he complained that the French authorities had failed to employ sufficient material means to ensure that the rights secured under the Convention were observed.

Finally, after having pointed out that despite his written request he had not been assisted by counsel in a previous appeal lodged against an order of the Indictments Chamber of 27 April 1982, the applicant, referring to Article 6 para. 3 (c) of the Convention, expressly requested that he be assisted in the Court of Cassation by a lawyer of the Court of Cassation and the Conseil d'Etat Bar. He further submitted that, should he not be so assisted, the Court of Cassation should find an infringement of Article 6 para. 3 (c) of the Convention.

By a letter of 12 April 1983 the President of the Bar Association informed the applicant, following a letter drawing attention to his previous letter of 29 March 1983, that he had instructed one of his colleagues to examine the file, which had been

entered on the case-list of the Court of Cassation since 13 January 1983, but that the registry had not fixed a time-limit for the submission of his pleadings.

In fact, on the same day, by an order of 12 April 1983, the Court of Cassation, having had regard to the written pleadings which the applicant had himself formulated, dismissed the appeal on the following grounds:

> "In dismissing the application for provisional release, after having cited the particular difficulties which had impeded the progress of the investigation, the Indictments Chamber noted that Woukam, who is a foreign national and who was not in gainful employment at the time of his arrest, lived from theft, was wanted by the Belgian authorities and had no fixed address. Accordingly his detention on remand was the sole means of ensuring that he remained available to the investigating authorities, that no pressure was put on witnesses with whom he had not been confronted and that there was no unlawful collusion between the applicant and accomplices who were still at large.
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> Moreover, the Court of Appeal held that 'the principle enshrined in the European Convention on Human Rights and relied upon by the accused is guaranteed by the Code of Criminal Procedure under whose provisions any accused person can organise his defence, enforce his rights and avail himself of any remedy against detention on remand'.
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> In these circumstances the Court of Cassation is satisfied that the Indictments Chamber's dismissal of the application for provisional release fulfilled the conditions laid down in Article 148 of the Code of Criminal Procedure, in accordance with Article 145 of that Code, for the cases exhaustively listed in Article 144 thereof. It finds in addition that the provisions of the European Convention on Human Rights relied on by the appellant, who presented argument in the Court of Cassation, have been complied with."

By a letter of 17 May 1983 and following a request from the applicant on 12 May, the President of the Bar Association informed the applicant that the lawyer whom he had instructed to examine the file had been unable to establish any ground for appeal and that the Criminal Chamber of the Court of Cassation had dismissed the applicant's appeal by order of 12 April 1983.

On 26 December 1983, after three years and three months of detention on remand, the Pontoise investigating judge discharged the applicant on the ground that there was insufficient proof. He ordered the applicant's release subject to his being detained for any other reason.

In fact in October 1983 the applicant had been transferred from Fresnes prison to Loos prison at Lille where he was held on a charge relating to an armed robbery which he was alleged to have committed in 1980 in Belgium and which he again

denied having committed. The applicant submitted a request for provisional release to the Lille investigating judge who ordered his release without even questioning him as to the acts of which he was accused. The applicant was therefore released on 18 January 1984.

On 20 June 1984 the applicant submitted a claim for compensation to the Compensation Board of the Court of Cassation on the basis of Article 149 *et seq.* of the Code of Criminal Procedure. He claimed 10 million FF and, subsidiarily, 133,000 FF representing 38 months of detention multiplied by the minimum monthly wage calculated at 3,500 FF.

Article 149 of the Code of Criminal Procedure provides as follows:

"Without prejudice to the provisions of Article 505 *et seq.* of the Code of Civil Procedure, compensation may be granted to a person who has been held in detention on remand where such detention has been terminated by a decision which has become final to discharge or acquit him and where such detention has caused him damage of a clearly excessive and particularly serious nature."

By decision of 21 February 1986, in which no reasons were stated, the Board, whose decisions are final (Article 149-1 of Code of Criminal Procedure), awarded the applicant the sum of 30,000 FF.

COMPLAINTS

The applicant complains that the length of his detention on remand and of the criminal proceedings instituted against him exceeded a reasonable time, and thus infringed Articles 5 and 6 of the Convention.

He points out in this respect that the case was not complex, since it concerned a single bank robbery, that all the suspects were in detention for other reasons and that it had been clear what measures were necessary for the investigation at the latest by 27 April 1982 from the order made by the Indictments Chamber on that date, despite which no action had been taken.

The applicant also complains that he did not have the effective assistance of a lawyer of the Court of Cassation Bar in the proceedings for the examination of his appeals in the Court of Cassation, despite his express and written request, and relies in this respect on Article 6 para. 3 (c) of the Convention.

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THE LAW

1. The applicant complains of the excessive length of his detention on remand.

Article 5 para. 3 provides that everyone arrested or detained with a view to being brought before the competent judicial authority is "entitled to trial within a reasonable time or to release pending trial".

The Commission notes that the applicant, who was arrested on 1 October 1980 on a charge of armed robbery, was held on remand until 26 December 1983. On that date the investigating judge ordered his discharge and release from detention.

a. The Government claim in the first place that the applicant, to whom the Compensation Board attached to the Court of Cassation awarded 30,000 FF as compensation for the damage suffered as a result of his detention on remand, can no longer claim to be the victim of an infringement of the Convention.

The applicant considers, for his part, that despite this compensation, granted by a decision of the Compensation Board in which no reasons were stated, all the material and non-material damage suffered by him subsisted and that he was therefore still the victim of an infringement of the Convention.

The Commission takes the view that the applicant does not lose the status of "victim" within the meaning of Article 25 of the Convention solely because compensation was accorded to him on the basis of the facts forming the subject of his complaint to the Commission. The domestic courts must also expressly recognise the alleged infringement of the Convention and, if necessary, provide redress in relation thereto. Only when these two conditions are satisfied does the subsidiary nature of the protective mechanism set up by the Convention preclude examination of an application. The Commission refers on this point, *mutatis mutandis*, to the judgment of the European Court of Human Rights in the Eckle Case (Eur. Court H.R., Eckle judgment of 15 July 1982, Series A no. 51, p. 30, paras. 66 *et seq.*).

Having regard to the amount accorded under the Compensation Board's decision, in which no reasons were stated, the Commission considers that the applicant may still claim to be the victim of a violation of Article 5 para. 3 of the Convention.

b. The Government contend, as a subsidiary argument, that before petitioning the Commission, the applicant should have brought an action against the State founded on the defective operation of the administration of justice (Section 781 of the Courts Act) and that his failure to seek a remedy to the situation complained of in the competent national courts precludes the applicant from submitting his complaints to the Commission, by virtue of Article 26 of the Convention.

The applicant maintains that an action for damages against the State founded on the defective operation of the administation of justice would have been unlikely to succeed.

The Commission notes nevertheless that the right to obtain release from detention and the right to obtain compensation for any deprivation of liberty contrary to the provisions of Article 5 are two separate rights. Indeed, they appear in separate provisions in Article 5 of the Convention, paragraphs 3 and 5 thereof respectively.

The Commission takes the view 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. It therefore considers that 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 (see, *mutatis mutandis*, No. 9990/82, Dec. 15.5.84, D.R. 39 p. 119 and p. 144, para. 5).

It follows that the objection of failure to exhaust domestic remedies raised in this respect by the French Government cannot be upheld.

c. The Commission takes the view, moreover, that the applicant's complaint concerning the length of his detention on remand cannot be declared manifestly ill-founded at this stage of the proceedings and raises complex issues which call for an examination of the merits.

2. The applicant also complains of the length of the criminal proceedings and relies on Article 6 para. 1 of the Convention, which provides that everyone is entitled "in the determination ... of any criminal charge against him ... to a ... hearing within a reasonable time by (a) tribunal ...".

a. The Government have claimed that, since the proceedings instituted against the applicant were terminated by a decision discharging him which did not determine a criminal charge, Article 6 para. 1 was not applicable. The applicant claims that this objection should be dismissed.

The Commission considers that the objection raised by the Government is founded neither on the letter nor the spirit of this provision of the Convention.

The Commission notes that Article 6 para. 1 of the Convention offers any person facing a criminal charge a certain number of essential guarantees for the proper conduct of the proceedings. It has moreover already examined complaints concerning the length of criminal proceedings ending in a discharge (Soltikow v. the Federal Republic of Germany, Comm. Report, 15.3.71, Yearbook 14 p. 68).

Furthermore, the Court has repeatedly acknowledged that the reasonable time referred to in Article 6 para. 1 of the Convention begins to run as soon as a person is "charged", in other words, for the purposes of Article 6 para. 1 of the Convention, as soon as suspicions of which he is the object have "substantially affected" his situation (Eur. Court H.R., Eckle judgment, *loc. cit.*, p. 33, para. 73). The Commission notes that over the period in question, the applicant was facing a criminal charge within the meaning of Article 6 para. 1 of the Convention and that accordingly he may rely on Article 6 para. 1.

b. In this respect the applicant has argued that the case was not complex and that the measures of investigation necessary had been made clear, at the latest by an order of the Indictments Chamber made on 27 April 1982, despite which no action was taken.

The Government have stressed the complexity of the proceedings.

The Commission takes the view that at this stage in the examination of the case, the applicant's complaint cannot be declared manifestly ill-founded and raises problems which call for an examination of its merits.

3. The applicant also complains that he did not have the effective assistance of a lawyer in the Court of Cassation for the examination of his appeals against the decisions refusing his release. He relies on the provisions of Article 6 para. 3 (c) of the Convention.

The Commission notes, however, that in the Neumeister Case (Eur. Court H.R., Neumeister judgment of 27 June 1968, Series A no. 8, p. 43, paras. 23 and 24) the Court laid down the principle that the guarantees provided for in Article 6 cannot be relied upon in proceedings which fall within the scope of Article 5 para. 4. The Court then observed that such proceedings must nevertheless provide certain fundamental guarantees appropriate to the proceedings in question.

The question whether, in this case, the right to be assisted by a lawyer if necessary was, having regard to what was at stake in the proceedings, a fundamental procedural requirement falling within the scope of Article 5 para. 4 of the Convention, raises complex issues which cannot be resolved at this stage of the examination of the application and which call for an examination as to its merits.

For these reasons, the Commission

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.