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

CASE OF SELMOUNI v. FRANCE

(Application no. 25803/94)

JUDGMENT

STRASBOURG

28 JULY 1999

In the case of Selmouni v. France,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), as amended by Protocol No. 11[1], and the relevant provisions of the Rules of Court[2], as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mr L. FERRARI BRAVO,
Mr G. BONELLO,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr J.-P. COSTA,
Mr W. FUHRMANN,
Mr K. JUNGWIERT,
Mr M. FISCHBACH,
Mr B. ZUPANČIČ,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mrs W. THOMASSEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr T. PANȚÎRU,
Mr R. MARUSTE,
Mr K. TRAJA,

and also of Mrs M. DE BOER-BUQUICCHIO, *Deputy Registrar*,

Having deliberated in private on 18 March, 24 June and 7 July 1999,

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

PROCEDURE

1. The case was referred to the Court, as established under former Article 19 of the Convention[3], by the European Commission of Human Rights ("the Commission") and by the Netherlands Government on 16 March 1998 and 14 April 1998 respectively, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 25803/94) against the French Republic lodged with the Commission under former Article 25 by a Netherlands and Moroccan national, Mr Ahmed Selmouni, on 28 December 1992.

Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. Since the entry into force of Protocol No. 11, which amended Article 19, the Court has functioned on a permanent basis.

The Commission's request referred to former Articles 44 and 48 and to the declaration whereby France recognised the compulsory jurisdiction of the Court (former Article 46); the Netherlands Government's application referred to former Article 48. The object of the request and 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 Articles 3 and 6 § 1 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of former Rules of Court A[1], the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (former Rule 30).

3. As President of the Chamber which had originally been constituted (former Article 43 of the Convention and former Rule 21) in order to deal, in particular, with procedural matters that might arise before the entry into force of Protocol No. 11, Mr R. Bernhardt, the President of the Court at the time, acting through the Registrar, consulted the Agents of the Governments, the applicant's lawyer and the Delegate of the Commission on the organisation of the written procedure. Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 27 November 1998 and those of the French Government ("the Government") and the Netherlands Government on 7 December 1998.

4. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr J.-P. Costa, the judge elected in respect of France (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, and Mr M. Fischbach, Vice-President of Section (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr L. Ferrari Bravo, Mr L. Caflisch, Mr P. Kūris, Mr W. Fuhrmann, Mr K. Jungwiert, Mr M. Zupančič, Mrs N. Vajić, Mr J. Hedigan, Mrs W. Thomassen, Mrs Tsatsa-Nikolovska, Mr T. Panţîru, Mr E. Levits and Mr K. Traja (Rule 24 § 3 and Rule 100 § 4). Subsequently Mr G. Bonello and Mr R. Maruste, substitute judges, replaced Mrs Palm and Mr Levits, who were unable to take part in the further consideration of the case (Rule 24 § 5 (b)).

5. At the Court's invitation (Rule 99), the Commission delegated one of its members, Mr D. Šváby, to take part in the proceedings before the Grand Chamber.

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1. *Note by the Registry*. Rules of Court A applied to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and from then until 31 October 1998 only to cases concerning States not bound by that Protocol.

6. In accordance with the President's decision, a hearing took place in public in the Human Rights Building, Strasbourg, on 18 March 1999.

There appeared before the Court:

(a) *for the Government*
Mr J.-F. DOBELLE, Deputy Director of Legal Affairs,
Ministry of Foreign Affairs, *Agent*,
Mrs M. DUBROCARD, Assistant Director of Human Rights,
Legal Affairs Department,
Ministry of Foreign Affairs,
Mrs F. DOUBLET, Head of the Comparative and International
Law Office, Civil Liberties and Legal Affairs
Department, Ministry of the Interior,
Mr J.-C. MULLER, Department of Criminal Affairs
and Pardons, Ministry of Justice, *Advisers*;

(b) *for the applicant*
Mrs M.-A. CANU-BERNARD, of the Paris Bar, *Counsel*;

(c) *for the Commission*
Mr D. ŠVÁBY, *Delegate*.

The Court heard addresses by Mr Šváby, Mrs Canu-Bernard and Mr Dobelle.

THE FACTS

7. Mr Selmouni, a Netherlands and Moroccan national, was born in 1942 and is currently in prison in Montmédy (France).

A. The origin and the filing of the complaint

8. On 20 November 1991 the police arrested Géray Tarek, Dominique Keledjian and Mr Keledjian's girlfriend in connection with a drug-trafficking investigation, on the instructions of Mr de Larosière, an investigating judge at the Bobigny *tribunal de grande instance.* Dominique Keledjian made a voluntary statement, telling the police that he had bought his heroin in Amsterdam from a certain "Gaby", who had helped him conceal it in order to bring it into France over a number of trips. He

gave the police a telephone number in Amsterdam which enabled them to identify the applicant.

9. On 25 November 1991 Mr Selmouni was arrested following surveillance of a hotel in Paris. After being identified by Dominique Keledjian and his girlfriend, Mr Selmouni explained that he had had business dealings with Dominique Keledjian in the clothes trade. He denied any involvement in drug trafficking.

10. Mr Selmouni was held in police custody from 8.30 p.m. on 25 November 1991 until 7 p.m. on 28 November 1991. He was questioned by police officers from the Seine-Saint-Denis Criminal Investigation Department ("*SDPJ* 93") in Bobigny.

11. Mr Selmouni was first questioned from 12.40 a.m. to 1.30 a.m. on 26 November 1991 by the police officers against whom he later made a complaint. Having been questioned and taken back to the court cells, Mr Selmouni had a dizzy spell. The court cell officers took him to the casualty department at Jean Verdier Hospital in Bondy at 3.15 a.m. The medical observations made by the casualty department read as follows:

> "Date of examination: 26 November 1991. 3.15 a.m. Attends casualty complaining of assault. On examination, several superficial bruises and injuries found on both arms. Bruises on outer left side of face. Bruise on left hypochondrium. Marks of bruising on top of head. Chest pains increase with deep respiration. Neurological examination shows no abnormalities."

12. On 26 November 1991 the investigating judge extended police custody by forty-eight hours. Mr Selmouni was questioned from 4.40 p.m. to 5.10 p.m., at 7 p.m., from 8 p.m. to 8.15 p.m. and from 10.25 p.m. to 11.30 p.m. On the same day Mr Selmouni was examined by a Dr Aoustin, who made the following observations:

> "Bruising to the left eyelid, left arm, lower back. Scalp painful."

13. On 27 November 1991 Mr Selmouni was questioned from 11 a.m. to 11.40 a.m. On examining him again, Dr Aoustin made the following notes:

> "Substantial bruising to the left eyelid, left arm, lower back. Bruising to the scalp. Ate nothing yesterday … Complaints forwarded."

14. After being questioned from 9.30 a.m. to 10.15 a.m. on 28 November 1991, Mr Selmouni was again examined by Dr Aoustin, who noted on his medical certificate:

> "Bruising to the left eyelid, left arm, lower back. Bruising to the scalp. No current treatment."

15. At 11.30 a.m. on 29 November 1991 the applicant was examined by Dr Edery, a general practitioner. He drew up a certificate, at Mr Selmouni's request, to the effect that Mr Selmouni claimed to have been assaulted. The certificate stated:

"Headaches, bruises under left and right eyes, on left and right arms, back, thorax, left and right thighs and left knee. All areas painful."

16. On the same day the applicant was brought before the investigating judge, who charged him with offences against the dangerous drugs legislation and remanded him in custody. On Mr Selmouni's first appearance before the investigating judge, the latter, on his own initiative, appointed Dr Garnier, an expert in forensic medicine on the Paris Court of Appeal's panel, to examine Mr Selmouni, "who claim[ed] to have been ill-treated while in police custody", and another person, Mr Abdelmajid Madi, arrested on 26 November 1991 and charged with the same offences.

17. On 2 December 1991 the applicant was examined by Dr Nicot from the medical department of Fleury-Mérogis Prison. In a medical certificate drawn up at Mr Selmouni's request the doctor made the following observations:

"… extensive bruising to the trunk and thighs and substantial bruising round the eyes. Presents conjunctival bruises. Says sight impaired in left eye."

18. On 7 December 1991 Dr Garnier, the expert appointed by the investigating judge, examined the applicant at the prison. Mr Selmouni made the following statement to the doctor:

"I was stopped in the street on 25 November 1991 at about 9 a.m. There were no problems at that stage. I was taken to the hotel where I was living. One of the six plain-clothes policemen then hit me in the area of my left temple. I was then taken to Bobigny police station. At about 10 a.m. I was taken up to the first floor, where about eight people started hitting me. I had to kneel down. One police officer pulled me up by my hair. Another policeman hit me repeatedly on the head with an instrument resembling a baseball bat. Another one kept kicking and punching me in the back. The interrogation continued non-stop for about an hour. In the night I asked to be examined. I was taken to hospital, where I had head and chest X-rays. I was hit again at about 9 p.m. the following day during a further interrogation and this went on until 2 a.m. When I arrived at Fleury, I underwent a medical examination."

19. The doctor noted in his report:

– "sub-orbital haematoma extending 2 cm below the left lower eyelid, purplish, almost completely healed,

– thin linear scar, approximately 1 cm long, continuing the line of the left eyebrow,

– one right sub-orbital haematoma, almost completely healed,

– multiple skin abrasions (six of which are large), almost completely healed, on the left arm,

– two 5 cm linear skin abrasions – possibly scratches – on the right arm,

– 0.5 cm skin lesion on the back of the right hand,

– haematoma on the back of the thorax, over the right shoulder blade,

– one haematoma on the right side,

– severe (10 cm by 5 cm) haematoma on the left side of the thorax,

– three haematomas on the left side,

– severe (5 cm by 3 cm) haematoma on the front of the thorax, purplish, in the epigastric region,

– haematoma in the right prehepatic region,

– haematoma on the left of the ribcage 5 cm below the nipple,

– 5 cm by 3 cm haematoma on the left side on the axillary line,

– haematoma in the right subclavian region,

– haematoma on the right buttock,

– 10 cm by 5 cm haematoma on the left buttock,

– 5 cm by 1 cm linear haematoma on the outer front part of the left thigh,

– skin abrasion corresponding to a wound, now healing, on the front of the right ankle,

– swelling on the back of the right foot and a skin abrasion on the back of the foot,

– five superficial wounds, now healing, on the lower front part of the right leg,

– skin abrasions and bruised swelling on the back of the first two metacarpals of the left hand.

The patient states that on his arrival at Fleury he was treated with skin cream and given painkillers.

No injuries to the scalp or left eyeball …”

20. The conclusion of the report is as follows:

"CONCLUSION

Mr Selmouni states that he was subjected to ill-treatment while in policy custody.

He presents lesions of traumatic origin on his skin that were sustained at a time which corresponds to the period of police custody.

These injuries are healing well."

21. That report was attached to the investigation file opened in respect of the applicant. On 11 December 1991 the investigating judge sent it to the public prosecutor's office.

22. In an order of 8 September 1992 the investigating judge committed the applicant for trial at the Criminal Court and ordered him to be kept in detention on remand.

23. On 17 February 1992 the public prosecutor's office at the Bobigny *tribunal de grande instance* instructed the National Police Inspectorate to question the police officers concerned.

24. When questioned at Fleury-Mérogis Prison by an officer of the National Police Inspectorate on 1 December 1992, the applicant confirmed his earlier statement as follows:

"… At about 8.30 p.m. on 25 November 1991 I was arrested in the vicinity of my hotel, the Terminus Nord, near the Gare du Nord in Paris by two or three plain-clothes policemen. They pushed me against a wall while pressing the barrels of two guns against my neck.

I offered no resistance to my arrest and did not struggle.

You remind me that during questioning on 27 November 1992 I admitted that I had attempted to escape arrest. I dispute that. First of all, I maintain that I did not make such a statement to the police officer who questioned me and, moreover, I signed the records of interview without having read them. The policeman told me on my release from police custody that he had got me to sign that I had resisted arrest and that they were covered.

I was alone when I was arrested and immediately afterwards I was taken to my hotel room, which was searched in my presence. Two other policemen were already there.

While they were searching my room, the youngest police officer of the group punched me on the left temple. When they had finished searching my room I was taken to the Drugs Squad station in Bobigny and to an office on the first or second floor.

After I had been subjected to a body search, during which everything in my possession was taken, my interrogation by five police officers began.

One of them, who appeared to be in charge, made me kneel on the floor and began pulling my hair while another one hit me in the ribs with a stick resembling a baseball bat.

He then kept tapping me on the head with the bat.

The three other police officers were also actively involved, punching me and some of them standing on my feet and crushing them.

I seem to recall arriving at Bobigny police station at about 10 p.m. The treatment I have described continued until 1 a.m.

Following that first interrogation I was handed over to uniformed policemen on the ground floor of the building in which I was detained. As my ribs and head were hurting from the blows I had received, I informed these policemen and was taken in the night to a hospital in the area, but cannot say which one. There I underwent several examinations, including X-rays, and was later taken to a police station, but not the one to which I had first been taken.

The uniformed police officers treated me decently.

The following morning, before being questioned a second time, I was examined on the premises of the Drugs Squad by a doctor, who was able to see the marks on my body caused by the policemen's brutality.

On 26 November 1992 I was questioned again by several police officers – three or four – at some point in the day. I believe it was at about 10 a.m. On that occasion they pulled my hair, punched me and hit me with a stick**.**

In the evening of the same day, when there were fewer staff on the first floor, I was questioned again by six police officers, who were particularly brutal to me. I was punched, and beaten with a truncheon and a baseball bat. They all carried on assaulting me until 1 a.m. I think that this session of ill-treatment had begun at about 7 p.m. At one point they made me go out into a long office corridor where the officer I presumed was in charge grabbed me by the hair and made me run along the corridor while the others positioned themselves on either side, tripping me up.

They then took me into an office where a woman was sitting and made me kneel down. They pulled my hair, saying to this woman 'Look, you're going to hear somebody sing'.

I remained there for about ten minutes. I cannot describe this woman to you, but she looked young.

I was then taken back out into the corridor, where one of the police officers took out his penis and came up to me saying 'Here, suck this'; at that point I was on my knees. I refused, keeping my mouth closed because he had brought his penis up to my lips.

When I refused, that officer urinated over me at the suggestion of one of his colleagues.

After that, I was taken to an office and threatened with burns if I did not talk. When I refused, they lit two blowlamps which were connected to two small blue gas-bottles. They made me sit down and placed the blowlamps about one metre away from my feet, on which I no longer had shoes. At the same time they were hitting me. Following that ill-treatment, they brandished a syringe, threatening to inject me with it. When I saw that, I ripped open my shirt-sleeve, saying 'Go on, you won't dare'; as I had predicted, they did not carry out their threat.

My reaction prompted a fresh outburst of violence from the policemen and I was ill-treated again.

The police officers left me in peace for about fifteen minutes, then one of them said 'You Arabs enjoy being screwed'. They took hold of me, made me undress and one of them inserted a small black truncheon into my anus.

NB. When Mr Selmouni relates that scene, he starts crying.

I am aware that what I have just told you is serious, but it is the whole truth, I really did suffer that ill-treatment.

After the sexual assault, I was put into a cell again.

The next day I was examined by a doctor, who was able to observe my condition.

I had informed the doctor that the policemen had been assaulting me and I had even asked him to tell them to stop torturing me.

The violence I have just described was committed during the nights of 25 to 26 and 26 to 27 November 1991.

Thereafter, until I was brought before the investigating judge, I was occasionally punched.

Before bringing me before the investigating judge, the policemen were very kind, even going so far as to offer me coffee.

When I signed the papers concerning my belongings, I noticed that 2,800 guilders and a Dupont lighter had disappeared. I informed a policeman about this – the one I thought was in charge – who replied 'Shit, again', and the matter was left at that.

The lighter bears the initials A.Z.

I can identify the six policemen who hit me.

I can also describe the part played by each one.

The officer in charge is slightly balding. The one who showed me his penis and then sodomised me with a truncheon is of medium height, fairly thickset, aged 30 to 35, and fair-haired.

As soon as I was brought before the investigating judge, I told him that I had been assaulted, and a few days later I was examined at the prison. However, on the actual day I was brought before the investigating judge I had seen a doctor at the Bobigny law courts.

I have had a lawyer for one month and have informed him of the manner in which I was treated while in police custody.

When I arrived at the prison, the marks left by the assault were all over my body. I now have trouble with my eyes.

I am lodging a complaint against the policemen."

25. The record of the interview was sent to the Bobigny public prosecutor on 2 December 1992 as part of the proceedings numbered B.92.016.5118/4.

26. In a judgment of 7 December 1992 the Thirteenth Division of the Bobigny Criminal Court sentenced the applicant to fifteen years' imprisonment and permanent exclusion from French territory and, as to the civil action by the customs authorities, ordered him to pay, jointly and severally with his co-accused, an aggregate sum of twenty-four million French francs. In a judgment of 16 September 1993 the Paris Court of Appeal reduced the prison sentence to thirteen years and upheld the remainder of the judgment. On 27 June 1994 the Court of Cassation dismissed the applicant's appeal.

27. Mr Selmouni attended Hôtel-Dieu Hospital for treatment at regular intervals during his detention.

B. The investigation proceedings

28. On 1 February 1993 the applicant lodged a criminal complaint together with an application to join the criminal proceedings as a civil party with the senior investigating judge at the Bobigny *tribunal de grande instance* for "assault occasioning actual bodily harm resulting in total unfitness for work for more than eight days; assault and wounding with a weapon (namely a baseball bat); indecent assault; assault occasioning permanent disability (namely the loss of an eye); and rape aided and abetted by two or more accomplices, all of which offences were committed between 25 and 29 November 1991 by police officers in the performance of their duties".

29. On 22 February 1993, in the proceedings numbered B.92.016.5118/4, the Bobigny public prosecutor requested that an investigation be opened into the complaint lodged by Mr Selmouni and a similar complaint lodged by a co-defendant, Mr Madi, concerning offences committed by a person or persons unknown of assault and wounding, with a weapon, of a defenceless person and indecent assault. The complaint lodged by the applicant on 1 February 1993 was registered on 15 March 1993. These new proceedings were given the reference number B.93.074.6000/9.

30. On 27 April 1993 Mrs Mary, the investigating judge at the Bobigny *tribunal de grande instance* to whom the case had been allocated, issued formal instructions to the Director of the National Police Inspectorate to take all necessary steps to establish the truth. She set 15 June 1993 as the date for filing his reports.

31. On 9 June 1993 Dr Garnier re-examined Mr Selmouni, at Mrs Mary's request. In his report, which he filed on 21 June 1993, he made the following observations:

> "When I first examined Mr Selmouni, he stated that he had been assaulted while in police custody. He has told me today that he did not mention the sexual assault on that occasion because he felt ashamed of it.
>
> An examination of the anal sphincter does not reveal any lesion such as to corroborate or invalidate the patient's statements, mainly owing to the amount of time which has elapsed since the alleged acts.
>
> The somatic lesions recorded in the previous medical certificate are healing well with no complications.
>
> As regards the alleged sexual assault, in the absence of any functional repercussion or visible injury, no sick-leave on grounds of total unfitness for work ['*ITTP*'] is necessary as a direct result of the alleged acts.
>
> TOTAL UNFITNESS FOR WORK
>
> The lesions recorded in the first medical certificate and observed when I prepared my first expert report are traumatic lesions with no serious features (haematomas and bruises) and necessitate an *ITTP* of 5 days.
>
> CONCLUSION
>
> Mr Selmouni states that he was sexually assaulted and beaten while in police custody.
>
> The traumatic lesions necessitated an *ITTP* of 5 days. The patient states that his sight in his left eye is impaired. An examination by an eye specialist is necessary if a causal link with the alleged acts is to be established.

As regards the sexual assault, in the absence of any visible injury and any functional repercussions, an *ITTP* is not necessary."

32. In an order of 15 June 1993 the investigating judge decided to join the two complaints relating to the same offences under the single reference B.92.016.5118/4.

33. She interviewed the applicant on 14 May 1993, instructed an expert on 9 June 1993 and served the parties with the expert's medical report on 15 September 1993.

34. On 7 July 1993 the applicant sent the investigating judge a copy of the medical certificates of 29 November and 2 December 1991 and reiterated the terms of his complaint.

35. In a letter of 3 September 1993 to the President of the Tenth Division of the Paris Court of Appeal, which was to hear the applicant's appeal against his conviction for offences against the dangerous drugs legislation, the applicant said that he had been raped with the baseball bat and added that a police officer had urinated over him. The applicant stated that, before sending that letter, he had also informed the President of the thirteenth division of the Bobigny Criminal Court of the ill-treatment inflicted on him while he was in police custody.

36. In a formal instruction of 8 October 1993 the investigating judge reiterated her request of 27 April 1993 as the 15 June 1993 time-limit for sending in the police inspectorate's reports had not been complied with. She also ordered Mr Selmouni's medical files to be seized at Fresnes Prison Hospital, Fleury-Mérogis Prison and Hôtel-Dieu Hospital.

37. The investigating judge interviewed the civil parties again on 6 December 1993, after receiving on 2 December 1993 the evidence taken by the police inspectorate on her instructions. On 26 January 1994 a lawyer was officially appointed to represent the applicant under the legal aid scheme. In letters of 23 June and 27 October 1994 the lawyer in question told the applicant that she was having difficulties obtaining a visiting permit.

38. The civil parties were interviewed again on 10 February 1994, on which date an identity parade was organised in order to identify the police officers against whom the allegations had been made. Mr Selmouni picked out four police officers from the ten who took part in the identity parade. They were Mr Jean-Bernard Hervé, Mr Christophe Staebler, Mr Bruno Gautier and Mr Patrice Hurault.

39. With a view to charging the police officers identified by the civil parties, the investigating judge sent the case file to the public prosecutor's office on 1 March 1994.

40. The Bobigny public prosecutor referred the case to the Paris Principal Public Prosecutor who, in turn, referred it to the Court of Cassation.

41. In a judgment of 27 April 1994 the Court of Cassation decided to remove the case from the Bobigny investigating judge and transfer it to a judge of the Versailles *tribunal de grande instance*, in the interests of the proper administration of justice. On 21 June 1994 the public prosecutor at the Versailles *tribunal de grande instance* reopened the investigation, under the reference V.94.172.0178/3, into offences of

> "assault by public servants occasioning total unfitness for work for more than eight days and sexual assault by several assailants or accomplices, against any persons identified as a result of the investigation".

42. On 22 June 1994 the case was allocated to Mrs Françoise Carlier-Prigent, the Vice-President of the Versailles *tribunal de grande instance* in overall charge of judicial investigations.

43. On 8 August 1994 the investigating judge requested that both of Mr Selmouni's medical files that had been placed under seal by the National Police Inspectorate be sent to her. The sealed documents were sent to her on 12 April 1995.

44. On 19 September 1995 Mr Selmouni underwent an operation on his left eye at Hôtel-Dieu Hospital.

45. In an order of 22 September 1995 the investigating judge appointed an eye specialist, Dr Biard, to examine Mr Selmouni.

46. On 5 January 1996 the medical expert was granted an extension of time in which to file his report. He filed it on 18 January 1996. In it he made the following findings:

> "1. Mr Selmouni's eyesight has deteriorated since he was operated on in September 1995. It cannot be said with certainty that it really deteriorated between 25 November 1991 and the end of September 1995.
>
> 2. The assault of which he complains, namely the blows to the left periorbital region of his face, could have caused eye injuries, but apart from subjective symptoms of metamorphopsia, or even reduced vision, and of an isolated problem with the epiretinal membrane, no mark on the eye, in particular the anterior chamber, has ever been found, nor has any sign of haemorrhaging in the retina occurring contemporaneously with the blows complained of and enabling a link to be established between them. However, signs of degeneration were found in relation to a constitutional disorder (short-sightedness in both eyes)."

47. On 6 February 1996 the medical report was served on Mr Selmouni, who also gave evidence. He maintained his allegations against the four police officers he had named. On 7 March 1996 evidence was also heard from the other civil party, Mr Madi. Mr Madi named a fifth police officer, Mr Alexis Leclercq.

48. In a letter of 2 May 1996 the investigating judge asked the Director of the Criminal Investigation Department ("CID") for the names and addresses of the police officers against whom the complaints had been filed. He replied on 23 May 1996.

49. On 21 October 1996 the investigating judge officially informed the five police officers implicated by the applicant that they were being placed under investigation.

50. The five police officers against whom Mr Selmouni and Mr Madi had lodged their complaints, namely Mr Hervé, Mr Staebler, Mr Gautier, Mr Leclercq and Mr Hurault, were questioned on their first appearance on 10, 24 and 31 January, 28 February and 7 March 1997. They were placed under investigation for assault by public servants occasioning total unfitness for work for more than eight days. Mr Hervé, Mr Staebler, Mr Gautier and Mr Hurault were also placed under investigation for sexual assault committed by a number of assailants or accomplices.

51. On 24 April 1998, in view of the denials by the police officers, who maintained that a "struggle" had ensued when Mr Selmouni was arrested, the investigating judge appointed Dr Garnier as expert again, instructing him to examine all Mr Selmouni's medical files and certificates and give his opinion as to whether the injuries found could have been caused in a "struggle" when he was arrested at approximately 8.30 p.m. on 25 November 1991 or whether they supported the applicant's allegations.

52. On the same day the applicant requested that a number of investigative measures be carried out, including a further confrontation between witnesses and further medical reports in order to determine the damage he had suffered, and an inspection by the judge of the premises on which he had been held in police custody. In an order of 7 May 1998 the investigating judge dismissed the requests, on the ground that some of them had been partly satisfied.

53. On 4 June 1998 a confrontation was held between the applicant and the four police officers. He described the part each of them had played while he had been in their custody.

54. Dr Garnier's report was filed on 3 July 1998. The expert concluded his report in the following terms:

> "An examination of the medical file shows that doctors found a progression of injury marks on the patient's body during the period in police custody.
>
> A number of them could certainly have been caused during a 'struggle' when the patient was arrested at approximately 8.30 p.m. on 25 November 1991, as described by the CID officers in question.
>
> The injuries, particularly those on the lower limbs and buttocks, which were not seen on the first examination, would certainly have been sustained after that arrest and support the patient's statements.
>
> As regards the acts of sodomy described by the patient, the negative result of the test carried out on 9 June 1993, that is one and a half years after the initial facts, neither disproves nor proves that they occurred."

55. On 25 August 1998 the investigating judge served notice on Mr Selmouni that the investigation was complete. The investigation file was sent to the public prosecutor's office on 15 September 1998.

56. On 19 October 1998 the public prosecutor submitted his written statement of how he wished the investigating judge to proceed with the case. He submitted, *inter alia*:

> " … the denials by the police officers concerned do not stand up to examination any more than does their reference to a 'struggle' when effecting the arrest or to forceful resistance during questioning.
>
> The absence of any variation or inconsistency in the statements made by Ahmed Selmouni and Abdelmajid Madi justifies taking them into consideration. They are, moreover, corroborated by medical findings and therefore amount to sufficient evidence against the five persons in question for the allegations to be examined by the trial court …"

57. In an order of 21 October 1998 the investigating judge committed the five police officers in question for trial at the Versailles Criminal Court. In respect of Mr Selmouni's allegations, the judge committed the four police officers concerned for trial at that court on charges of assault occasioning total unfitness for work for less than eight days and indecent assault committed collectively and with violence and coercion.

58. The trial was held at the Versailles Criminal Court on 5 February 1999. The applicant filed pleadings in support of an objection that the court had no jurisdiction to try the case and that it should be transferred to the Assize Court. He submitted that the sexual assault had in fact been rape; that he had been the victim of assault occasioning permanent disability, namely loss of visual acuity, committed by public servants; and, lastly, that the ill-treatment he had suffered should be classified as acts of torture inflicted before or during the commission of a crime. The court joined that objection to the merits. At the end of the trial the public prosecutor requested that Mr Hervé be sentenced to four years' imprisonment and Mr Staebler, Mr Hurault and Mr Gautier to three years' imprisonment. The Criminal Court reserved judgment until 25 March 1999.

59. In a judgment of 25 March 1999 the Versailles Criminal Court dismissed the objection to jurisdiction raised by Mr Selmouni, on the following grounds in particular:

(a) as to classification of the sex offence as rape:

> " … The Court must, however, conclude that neither the medical certificates nor the expert reports support the allegation of anal penetration. Furthermore, Selmouni was unable to identify the police officer who had allegedly raped him. Accordingly, the offence cannot be classified as rape."

(b) as to classification of the assault as assault occasioning permanent disability:

" … The Court observes that the expert report prepared by Dr Biard does not allow a causal link to be established between Mr Selmouni's loss of visual acuity and the blows he received. This point of his objection therefore cannot be allowed."

(c) as to classification of the ill-treatment as acts of torture inflicted before or during the commission of a crime:

"Apart from the fact that those acts were not so classified in the former Criminal Code applicable at the material time, in the instant case the acts of violence inflicted on Ahmed Selmouni which he alleges should be classified as acts of torture or barbarism were not inflicted before or during the commission of a crime.

The Court therefore considers that the acts in question cannot be classified as a crime …"

60. In determining whether or not the police officers were guilty, the Criminal Court noted that "two completely contradictory arguments [had been] submitted to it" and decided to examine "in turn" "a number of explanations" given by the police officers. Assuming that "it [had been] established … that [the applicant's] injuries [had been] caused during – or within a very short time before or after – police custody", the court considered that the attempts made by the civil parties to resist arrest did not suffice to explain the extent of the injuries found; that the "inconsistencies", if any, in the civil parties' statements were not decisive and that, in general, "the civil parties had been consistent in their account of events and the timing of them"; that even where there is strong evidence, "any police officer knows well that a confession is preferable and very difficult for a defendant to contest later"; and that "there [was] ample evidence to disprove the allegation that the civil parties [had] conferred when filing their complaints against the police officers".

61. The Versailles Criminal Court found that "the evidence gathered during the investigation and produced at the trial show[ed] that events [had] indeed occur[red] in the manner described by the victims" and convicted the police officers of the offences charged. The court considered itself bound to "apply the criminal law in a way that [would] serve as an example to others" and sentenced Mr Hurault, Mr Gautier and Mr Staebler to three years' imprisonment. With regard to the fourth police officer, the court held:

" … in his capacity as Detective Chief Inspector in charge of the group of police officers, Bernard Hervé was responsible for the methods used to conduct the investigation under his control and direction. In addition, he had been directly involved in the assault since he had pulled the civil parties' hair. The civil parties had unequivocally identified him as the officer in charge.

The Court therefore deems it necessary to punish Bernard Hervé more severely for his actions and sentences him to four years' imprisonment.

As Mr Hervé is still in a position of responsibility, it is necessary, as a matter of public policy, that sentence be executed immediately. The Court issues a warrant for Bernard Hervé's arrest."

62. The Versailles Criminal Court declared admissible Mr Selmouni's application to join the proceedings as a civil party. It noted that he had not quantified his claims for damages and that he had reserved the right to apply to the civil courts.

63. The police officers appealed.

64. In a judgment of 8 April 1999 the Versailles Court of Appeal dismissed an application for release made by Mr Hervé, on the following grounds:

> "… the offences in question, because of their exceptionally serious nature having regard to the status of senior police officer [*officier de police judiciaire*], responsible for enforcing the laws of the Republic, possessed by the accused, who was convicted at first instance, have resulted in serious and continuing prejudice to public order …"

65. In a judgment of 1 July 1999, following hearings on 20 and 21 May 1999, after which Mr Hervé was released, the Versailles Court of Appeal acquitted the policemen for lack of evidence on the charge of indecent assault, but held them to be guilty of "assault and wounding with or under the threat of the use of a weapon, occasioning total unfitness for work for less than eight days in the case of Selmouni and more than eight days in the case of Madi, by police officers in the course of their duty and without legitimate reason". It sentenced Mr Hervé to eighteen months' imprisonment, of which fifteen months were suspended, Mr Gautier and Mr Staebler to fifteen months' imprisonment suspended and Mr Hurault to twelve months' imprisonment suspended. The Court of Appeal gave, *inter alia*, the following reasons for its decision:

> "***As to guilt***
>
> *As to the assaults*
>
> In absolute terms the word of a policeman, *a fortiori* that of a senior one [*officier de police judiciaire*] is more credible than that of a drug trafficker. That premiss, however, is weakened, and even made unsound, where statements by offenders are supported by external evidence such as medical findings. It is put even more in doubt where the explanations provided by the policemen vary significantly during the course of the proceedings; and the presumption in favour of the police is destroyed if it is shown, as in the instant case, that the police reports do not reflect the truth.

As to the medical findings

The accusations made by the civil parties are supported by unequivocal medical findings. In the first place, as regards Selmouni, the expert Professor Garnier noted in his report of 5 May 1998 that all the doctors who had examined him while he was in police custody had found lesions of traumatic origin on the left arm, in the left orbital region, on the scalp and on the back. On 29 November 1991 further lesions were seen on the lower limbs. He added that during his examination on 7 December 1991 he had again found lesions that had been described earlier and that he found others on the buttocks and on the right ankle.

The extent of the injuries on Selmouni's person increased as the uninterrupted police custody continued.

The bruising to the left eyelid, the thin linear scar one centimetre long continuing the line of the left eyebrow, the left and right sub-orbital haematomas found on 29 November 1991 by Dr Edery, and then described on 2 December 1991 by Dr Nicot as being 'round the eyes', are consistent with the punching mentioned by Selmouni.

The various haematomas found on the thorax, the left and right sides and the abdomen are consistent with the punching and kicking in his statement of 7 December 1991.

The pain in the scalp and the headaches mentioned by Drs Aoustin and Edery are likewise of a kind to support Selmouni's statements, according to which his hair was pulled and he was repeatedly tapped on the head with an instrument which could have been a baseball bat.

The haematomas found on the buttocks and the thighs could only have come from blows from a blunt instrument. Similarly, the lesions apparent on the legs, ankles and feet are consistent with the blows or crushing that Selmouni complained of.

It follows from the foregoing that the objective injuries, as recorded in successive examinations, match the blows described by Selmouni.

As regards Madi, the medical certificates and the expert medical opinions attest to the reality and intensity of the blows he sustained. Further, as set out by the expert, the time that elapsed between the appearance of the objective injuries and the events in issue strongly suggests repeated small injuries.

The scalp abrasions are absolutely consistent with his statement that on numerous occasions he was repeatedly struck on the head with a blunt instrument.

The rectangular shape of the large haematoma on the right thigh and of the three haematomas on the left thigh corresponds exactly to blows struck with a blunt instrument, as described by the complainant.

As to the accounts given by the defendants

The defendants' explanations of how the injuries found came about totally lack credibility. Moreover, on these points as on others, their explanations varied. Jean-Bernard Hervé, for instance, initially stated that he had acted as a reinforcement to arrest Selmouni (D57) but subsequently said that he was not in the street where the arrest took place but inside the hotel.

The defendants maintain that the accusations against them are the result of orchestrated, concerted action. It should be noted at this point that throughout the seven years of inquiries and judicial investigation no evidence was found to substantiate that allegation. The complainants' interests differed appreciably. The successive descriptions of the ill-treatment they alleged that they had suffered do not disclose any connivance, and it should be pointed out that Selmouni himself was hardly ever assisted by a lawyer in the proceedings concerning drug trafficking.

It is not without relevance to note that Madi and Selmouni, who had never been in police custody before, could not have made use of previous experience of it to fabricate a completely false story.

The mere fact of Selmouni's arrest near his hotel, even if it is assumed to have entailed something of a struggle, cannot explain either the seriousness of the injuries or their gradual onset as confirmed by the photographs in the file, seeing that, immediately afterwards, the policemen concerned did not record any suspicious signs either on their own persons or on that of Selmouni, signs that would have warranted a thorough medical examination, which would have been in their own interest.

As regards Madi, the policemen's account, according to which he had deliberately banged his head against a wall and a cupboard, is not consistent with the findings of the medical examinations.

The expert noted that in this type of occurrence it is normal to find, at the time of the events, unequivocal injuries and even bleeding wounds, which was not the case here.

Taken as a whole, these factors persuade the Court that the alleged resistance to arrest was invented by the accused to justify the seriousness and location of the haematomas and the lesions found on the detainee.

As to the reliability of the police reports

The policemen from *SDPJ* 93, in particular Jean-Bernard Hervé, admitted in court that several reports drawn up during the detention of Selmouni and Madi in police custody contained inaccurate statements both as to times and as to the identity of those who had written them. No persuasive logical explanation of this was given to the Court. Hurault, for example, drew up a report (D114) on the search which he made at Gonesse from 5.30 p.m. to 6.55 p.m. on 26 November, and 'recorded' at 6.45 p.m. – that is to say at the same time – in another report (D158) that Madi had resisted arrest, and also told the Court that he had intervened to calm him.

The complete unreliability of the documents drawn up by the investigators is extremely serious in that the entire functioning of the criminal justice system rests on the reliance that may be placed on the reports of senior police officers and their assistants [*officiers et agents de police judiciaire*].

In view of all the foregoing, the brutality of which the defendants are accused is patent and the trial court rightly held that during the proceedings they had done nothing but conceal the truth about their behaviour.

…

As to the sentence

The offences of which the defendants are guilty are exceptionally serious ones, and that precludes their benefiting from the provisions of the amnesty of 3 August 1995. They must be regarded as instances of particularly degrading treatment. Having been committed by senior officials responsible for enforcing the laws of the Republic, they must be punished firmly as such conduct cannot be justified, irrespective of the personality of the offenders in their charge and the degree of their corruption and dangerousness.

The seriousness of the offences, however, cannot be compared with what it would have been if the sexual assaults had been made out against the defendants. Nor do the offences appear to have been the result of a concerted plan. In view of the part played by each, the absence of any previous criminal record and the administrative files on the defendants, the Court considers that it must accordingly reduce the length of the prison sentences as indicated in the operative provisions of the judgment and leave it to the discretion of the defendants' superiors to determine what disciplinary consequences are necessary in the case, the prison sentences being suspended, only in part as regards Hervé, whose responsibility appears greater, regard being had to his being the officer in charge.

..."

PROCEEDINGS BEFORE THE COMMISSION

66. Mr Selmouni applied to the Commission on 28 December 1992. He alleged a violation of Articles 3 and 6 § 1 of the Convention.

67. The Commission declared the application (no. 25803/94) admissible on 25 November 1996. In its report of 11 December 1997 (former Article 31 of the Convention), it expressed the unanimous opinion that there had been a violation of Articles 3 and 6 § 1. The full text of the Commission's opinion is reproduced as an annex to this judgment[1].

1. *Note by the Registry*. For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission's report is obtainable from the Registry.

FINAL SUBMISSIONS TO THE COURT

68. In their memorial the Government asked the Court to state that, with respect to the complaint based on Article 3 of the Convention, the applicant had failed to exhaust domestic remedies and, in the alternative, that the offences with which the police officers in question were charged could not be classified as "torture". The Government acknowledged that the total length of the proceedings was excessive from the standpoint of Article 6 § 1 of the Convention.

69. The applicant requested the Court to find that there had been a violation of Articles 3 and 6 § 1 of the Convention and to award him just satisfaction under Article 41.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

70. The applicant complained that the manner in which he had been treated while in police custody had given rise to a violation of Article 3 of the Convention, according to which:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The Government's preliminary objection

71. The Government's main submission, which was the same as that made before the Commission, was that the complaint based on Article 3 could not be examined by the Court as the case stood because the applicant had not exhausted domestic remedies. The Government submitted that the applicant's application to join the criminal proceedings against the police officers as a civil party was an ordinary remedy sufficient to afford redress for the alleged damage. It had to be acknowledged, they argued, that there had been major developments in the proceedings since the Commission's findings of 25 November 1996. They considered, however, that there were no "special circumstances" in the present case allowing the Convention institutions to absolve the applicant from the obligation to exhaust domestic remedies (see the Akdivar and Others v. Turkey judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV). The Government submitted that they could not be accused of remaining "totally passive" since an administrative inquiry had been undertaken on the initiative of the Bobigny public prosecutor's office, which had subsequently requested, on

22 February 1993, that an investigation be opened. The Government also noted that although the handling of the proceedings had not been uniform, since periods of special diligence had alternated with periods of inactivity, the police officers had nonetheless ultimately been committed for trial at the Versailles Criminal Court. The Government pointed out that if the police officers were convicted, the applicant could, in his capacity as a civil party, claim compensation for the damage he had sustained. From that point of view, his application to join the criminal proceedings could not therefore be deemed to be "ineffective" within the meaning of Convention case-law.

The Government argued that the present case was distinguishable from the Mitap and Müftüoğlu v. Turkey case referred to by the Commission in its decision on admissibility (applications nos. 15530/89 and 15531/89, decision of 10 October 1991, Decisions and Reports (DR) 72, p. 169) and the cases of Tomasi v. France (application no. 12850/87, decision of 13 March 1990, DR 64, p. 128) and Ringeisen v. Austria (judgment of 16 July 1971, Series A no. 13), in which it had been acknowledged that the last stage of domestic remedies had been reached shortly after the lodging of the application but before the Commission had been called upon to decide on admissibility. Not only had the Commission not followed its usual case-law but, furthermore, the Mitap and Müftüoğlu case had concerned the length of the proceedings and not an alleged violation of Article 3.

The Government submitted that the excessive length of time taken to examine the applicant's complaint could not *ipso facto* lead to a finding that the remedy was ineffective; that due consideration should be given in the present case to the fact that the police officers in question were having to answer for their acts before the national criminal courts; and that the application brought before the Court was therefore premature.

72. The applicant replied that he had satisfied the obligation to exhaust domestic remedies. He observed that he had informed the officer of the National Police Inspectorate at the end of their interview on 1 December 1992 that he was lodging a complaint. He added that, owing to the failure of the public prosecutor's office at the Bobigny *tribunal de grande instance* to take any action, he had on 1 February 1993 lodged a criminal complaint with the senior investigating judge together with an application to join the proceedings as a civil party. His complaint and application had been registered on 15 March 1993. Thereafter, the applicant alleged, he had had no remedy with which to expedite the proceedings. He referred to the Aksoy v. Turkey case (judgment of 18 December 1996, *Reports* 1996-VI) to support his submission that "there is no obligation to have recourse to remedies which are inadequate or ineffective", maintaining that that definitely applied in the instant case.

73. The Commission found that Mr Selmouni had satisfied the requirements of Article 35 of the Convention. It considered, having regard to the seriousness of the applicant's allegations and to the length of time which had elapsed since the events took place, that the authorities had not taken all the positive measures required in the circumstances of the case to bring the investigation to a rapid conclusion.

74. The Court points out that the purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Convention institutions (see, for example, the Hentrich v. France judgment of 22 September 1994, Series A no. 296-A, p. 18, § 33, and the Remli v. France judgment of 23 April 1996, *Reports* 1996-II, p. 571, § 33). Consequently, States are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right through their own legal system. That rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in respect of the alleged breach in the domestic system. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see the Handyside v. the United Kingdom judgment of 7 December 1976, Series A no. 24, p. 22, § 48, and the Akdivar and Others judgment cited above, p. 1210, § 65). Thus the complaint intended to be made subsequently to the Court must first have been made – at least in substance – to the appropriate domestic body, and in compliance with the formal requirements and time-limits laid down in domestic law (see the Cardot v. France judgment of 19 March 1991, Series A no. 200, p. 18, § 34).

75. However, the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see, among other authorities, the following judgments: Vernillo v. France, 20 February 1991, Series A no. 198, pp. 11-12, § 27; Akdivar and Others cited above, p. 1210, § 66; and Dalia v. France, 19 February 1998, *Reports* 1998-I, pp. 87-88, § 38). In addition, according to the "generally recognised principles of international law", there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his disposal (see the Van Oosterwijck v. Belgium judgment of 6 November 1980, Series A no. 40, pp. 18-19, §§ 36-40).

76. Article 35 provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see the Akdivar and Others judgment cited above, p. 1211, § 68). One such reason may be constituted by the national authorities' remaining totally passive in the face of serious allegations of misconduct or infliction of harm by State agents, for example where they have failed to undertake investigations or offer assistance. In such circumstances it can be said that the burden of proof shifts once again, so that it becomes incumbent on the respondent Government to show what they have done in response to the scale and seriousness of the matters complained of (ibid.).

77. The Court would emphasise that the application of this rule must make due allowance for the context. Accordingly, it has recognised that Article 35 must be applied with some degree of flexibility and without excessive formalism (see the Cardot judgment cited above, p. 18, § 34). It has further recognised that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether the rule has been observed, it is essential to have regard to the particular circumstances of the individual case (see the Van Oosterwijck judgment cited above, pp. 17-18, § 35). This means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants (see the Akdivar and Others judgment cited above, p. 1211, § 69).

78. The Court points out that as soon as the applicant was released from police custody on 29 November 1991, the investigating judge dealing with the proceedings against him ordered an expert medical report (see paragraph 16 above) and that a preliminary investigation was carried out under the authority of the public prosecutor (see, in particular, paragraph 25 above). However, the Court notes that in the course of that preliminary investigation no statement was taken from the applicant until more than a year after the events in issue (see paragraph 24 above) and that the opening of a judicial investigation was not requested until after the applicant had lodged, on 1 February 1993, a criminal complaint together with an application to join the proceedings as a civil party (see paragraphs 28-29 above).

The Court notes that the circumstances of the case show that there were a number of other delays which should be considered. Almost a year elapsed between the medical examination on 7 December 1991 (see paragraph 18 above) and the interviewing of the applicant by the National Police Inspectorate (see paragraph 24 above); thereafter, again nearly a year elapsed between the opening of a judicial investigation (see paragraph 29 above) and the holding of an identity parade of the police officers (see paragraph 38 above); and two years and over eight months elapsed between the date on which they were identified and the date on which they were placed under investigation (see paragraph 50 above). The Court observes, like the Commission, that five years after the events no one had been charged, despite the fact that the police officers accused by the applicant had been identified. Moreover, the police officers did not finally appear before the Criminal Court (see paragraph 58 above) until almost five years after they had been identified and seven years after the period of police custody in question.

79. In the Court's opinion, the issue is consequently not so much whether there was an inquiry, since it appears to have been conclusively established that there was one, as whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible and, accordingly, whether the inquiry was "effective". This issue is of particular importance if it is recalled that where an individual has an arguable claim that there has been a violation of Article 3 (or of Article 2), the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see, among other authorities, the following judgments: Aksoy cited above, p. 2287, § 98; Assenov and Others v. Bulgaria, 28 October 1998, *Reports* 1998-VIII, p. 3290, § 102; and, *mutatis mutandis*, Soering v. the United Kingdom, 7 July 1989, Series A no. 161, pp. 34-35, § 88). The Court considers that Mr Selmouni's allegations, which – as was clear from medical certificates of which the authorities were aware – amounted at the very least to an arguable claim, were particularly serious, in respect of both the alleged facts and the status of the persons implicated.

80. Having regard to the foregoing, the Court considers, like the Commission, that the authorities did not take the positive measures required in the circumstances of the case to ensure that the remedy referred to by the Government was effective.

81. Accordingly, given the lack of convincing explanation by the Government as to the "effectiveness" and "adequacy" of the remedy they relied on, that is, a criminal complaint together with an application to join the proceedings as a civil party, the Court considers that the remedy available to the applicant was not, in the instant case, an ordinary remedy sufficient to afford him redress in respect of the violations he alleged. While emphasising that its decision is limited to the circumstances of this case and must not be interpreted as a general statement to the effect that a criminal

complaint together with an application to join the proceedings as a civil party is never a remedy which must be used in the event of an allegation of ill-treatment during police custody, the Court decides that the Government's objection on grounds of failure to exhaust domestic remedies cannot be upheld.

B. Merits of the complaint

1. The Court's assessment of the facts

82. The applicant complained that he had been subjected to various forms of ill-treatment. These had included being repeatedly punched, kicked, and hit with objects; being forced to kneel down in front of a young woman to whom an officer had said "Look, you're going to hear somebody sing"; having a police officer show him his penis, saying "Here, suck this", before urinating over him; being threatened with a blowlamp and then with a syringe; etc. The applicant also complained that he had been raped with a small black truncheon after being told "You Arabs enjoy being screwed". He stressed that his allegations had neither varied nor been inconsistent during the entire proceedings and submitted that the expert medical reports and the evidence heard from the doctors who had examined him established a causal link with the events which had occurred while he had been in police custody and gave credibility to his allegations.

83. The Commission considered that the medical certificates and reports, drawn up in total independence by medical practitioners, attested to the large number of blows inflicted on the applicant and their intensity.

84. In their memorial the Netherlands Government agreed with the Commission's analysis of the facts.

85. In their observations in the alternative on the merits of the complaint, the French Government pointed out that there had not yet been a final ruling in respect of the offences alleged and that the police officers in question should have the benefit of the presumption of innocence, in accordance with Article 6 § 2 of the Convention.

86. The Court refers to its established case-law according to which, under the scheme of the Convention in force prior to 1 November 1998, the establishment and verification of the facts was primarily a matter for the Commission (former Articles 28 § 1 and 31). Accordingly, it was only in exceptional circumstances that the Court used its powers in this area. The Court is not, however, bound by the Commission's findings of fact and remains free to make its own appreciation in the light of all the material before it (see, *inter alia*, the following judgments: Cruz Varas and Others v. Sweden, 20 March 1991, Series A no. 201, p. 29, § 74; McCann and Others v. the United Kingdom, 27 September 1995, Series A no. 324, p. 50, § 168; and Aksoy cited above, p. 2272, § 38).

87. The Court considers that where an individual is taken into police custody in good health but is found to be injured at the time of release, it is

incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see the Tomasi v. France judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11, and the Ribitsch v. Austria judgment of 4 December 1995, Series A no. 336, pp. 25-26, § 34). It also points out that in his criminal complaint and application to join the proceedings as a civil party, Mr Selmouni directed his allegations against the police officers in question (see paragraph 28 above) and that the issue of their guilt is a matter for the jurisdiction of the French courts, in particular the criminal courts, alone. Whatever the outcome of the domestic proceedings, the police officers' conviction or acquittal does not absolve the respondent State from its responsibility under the Convention (see the Ribitsch judgment cited above). It is accordingly under an obligation to provide a plausible explanation of how Mr Selmouni's injuries were caused.

88. In the instant case the Court considers that it should accept, in the main, the facts as established by the Commission, having been satisfied on the basis of the evidence which it has examined that the Commission could properly reach the conclusion that the applicant's allegations were proved beyond reasonable doubt, it being recalled that such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161, and the Aydın v. Turkey judgment of 25 September 1997, *Reports* 1997-VI, p. 1889, § 73). The existence of several medical certificates containing precise and concordant information and the lack of any plausible explanation of how the injuries had been caused justified the Commission's conclusion. The Court's analysis differs, however, from the Commission's opinion for two reasons.

Firstly, the Court considers, unlike the Commission, that it is required to rule on those of the allegations in Mr Selmouni's statements that are not supported by the medical reports. In that connection, it notes that in their defence observations the Government, while wishing to concentrate on the issue of the admissibility of the application, submitted arguments in the alternative on the seriousness of the facts and the ways in which they might be classified under Article 3 of the Convention. In those observations the Government debated the seriousness of the alleged injuries in the light of Dr Garnier's second report (see paragraph 31 above) and the report produced by the eye specialist, Dr Biard (see paragraph 46 above). Thus, notwithstanding these arguments submitted in the alternative, the Government did not at any time contest the other facts alleged by Mr Selmouni. The Court points out, as a subsidiary consideration, that those facts were taken as established both by the Criminal Court – excepting the allegations of rape and loss of visual acuity (see paragraphs 59-61 above) – and by the Versailles Court of Appeal, excepting the sexual assaults (see paragraph 65 above).

89. Accordingly, the Court is of the opinion that, with regard to the complaint submitted to it, those facts can be assumed to have been established.

90. The Court considers, however, that it has not been proved that Mr Selmouni was raped, as the allegation was made too late for it to be proved or disproved by medical evidence (see paragraph 54 above). Likewise, a causal link could not be established on the basis of the medical report between the applicant's alleged loss of visual acuity and the events which occurred during police custody (see paragraph 46 above).

2. The gravity of the treatment complained of

91. The applicant submitted that the threshold of severity required for the application of Article 3 had been attained in the present case. He considered that the motive for the police officers' actions had been to obtain a confession, as he had been informed against and the police officers had been convinced that he was guilty even though the body search and the search of his hotel room at the time of his arrest had not yielded any evidence. He asserted that, aged 49, he had never been convicted or even arrested and that he stood by his refusal to admit any involvement in the drug trafficking being investigated by the police. He contended that the police officers had deliberately ill-treated him, given their constant questioning by day and, above all, by night.

The applicant submitted that he had been subjected to both physical and mental ill-treatment. In his view, it was well known that such police practices existed, and that they required preparation, training and deliberate intent and were designed to obtain a confession or information. He argued that, in the light of the facts of the case, the severity and cruelty of the suffering inflicted on him justified classifying the acts as torture within the meaning of Article 3 of the Convention.

92. The Commission considered that the blows inflicted on the applicant had caused him actual injuries and acute physical and mental suffering. In its opinion, that treatment must have been inflicted on him deliberately and, moreover, with the aim of obtaining a confession or information. In the Commission's view, such treatment, inflicted by one or more State officials and to which medical certificates bore testimony, was of such a serious and cruel nature that it could only be described as torture, without it being necessary to give an opinion regarding the other offences, in particular of rape, alleged by the applicant.

93. In their memorial the Netherlands Government agreed with the Commission's assessment of the facts in the light of the provisions of the Convention, and with its conclusion.

94. The French Government pointed to a contradiction between the finding by the Commission, which noted the "seriousness" of the injuries found by Dr Garnier in his report of 7 December 1991, and the finding by

Dr Garnier himself, who concluded in a later report that the injuries had "no serious features". The Government also submitted that the eye specialist had concluded that there was no causal link between the alleged facts and the loss of visual acuity.

In any event, they contended in the light of both the Court's case-law (see the Ireland v. the United Kingdom, Tomasi and Aydın judgments cited above) and the circumstances of the case that the ill-treatment allegedly inflicted by the police officers did not amount to "torture" within the meaning of Article 3 of the Convention.

95. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see the following judgments: Ireland v. the United Kingdom cited above, p. 65, § 163; Soering cited above, pp. 34-35, § 88; and Chahal v. the United Kingdom, 15 November 1996, *Reports* 1996-V, p. 1855, § 79).

96. In order to determine whether a particular form of ill-treatment should be qualified as torture, the Court must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. As the European Court has previously found, it appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see the Ireland v. the United Kingdom judgment cited above, pp. 66-67, § 167).

97. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force on 26 June 1987, also makes such a distinction, as can be seen from Articles 1 and 16:

Article 1

"1. For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. …"

Article 16, paragraph 1

"1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in Articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment."

98. The Court finds that all the injuries recorded in the various medical certificates (see paragraphs 11-15 and 17-20 above) and the applicant's statements regarding the ill-treatment to which he had been subjected while in police custody (see paragraphs 18 and 24 above) establish the existence of physical and – undoubtedly (notwithstanding the regrettable failure to order a psychological report on Mr Selmouni after the events complained of) – mental pain or suffering. The course of the events also shows that the pain or suffering was inflicted on the applicant intentionally for the purpose of, *inter alia*, making him confess to the offence which he was suspected of having committed. Lastly, the medical certificates annexed to the case file show clearly that the numerous acts of violence were directly inflicted by police officers in the performance of their duties.

99. The acts complained of were such as to arouse in the applicant feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. The Court therefore finds elements which are sufficiently serious to render such treatment inhuman and degrading (see the Ireland v. the United Kingdom judgment cited above, pp. 66-67, § 167, and the Tomasi judgment cited above, p. 42, § 115). In any event, the Court reiterates that, in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see the Ribitsch judgment cited above, p. 26, § 38, and the Tekin v. Turkey judgment of 9 June 1998, *Reports* 1998-IV, pp. 1517-18, § 53).

100. In other words, it remains to be established in the instant case whether the "pain or suffering" inflicted on Mr Selmouni can be defined as "severe" within the meaning of Article 1 of the United Nations Convention. The Court considers that this "severity" is, like the "minimum severity" required for the application of Article 3, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc.

101. The Court has previously examined cases in which it concluded that there had been treatment which could only be described as torture (see the Aksoy judgment cited above, p. 2279, § 64, and the Aydın judgment cited above, pp. 1891-92, §§ 83-84 and 86). However, having regard to the fact that the Convention is a "living instrument which must be interpreted in the light of present-day conditions" (see, among other authorities, the following judgments: Tyrer v. the United Kingdom, 25 April 1978, Series A no. 26, pp. 15-16, § 31; Soering cited above, p. 40, § 102; and Loizidou v. Turkey, 23 March 1995, Series A no. 310, pp. 26-27, § 71), the Court considers that certain acts which were classified in the past as "inhuman and degrading treatment" as opposed to "torture" could be classified differently in future. It takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.

102. The Court is satisfied that a large number of blows were inflicted on Mr Selmouni. Whatever a person's state of health, it can be presumed that such intensity of blows will cause substantial pain. Moreover, a blow does not automatically leave a visible mark on the body. However, it can be seen from Dr Garnier's medical report of 7 December 1991 (see paragraphs 18-20 above) that the marks of the violence Mr Selmouni had endured covered almost all of his body.

103. The Court also notes that the applicant was dragged along by his hair; that he was made to run along a corridor with police officers positioned on either side to trip him up; that he was made to kneel down in front of a young woman to whom someone said "Look, you're going to hear somebody sing"; that one police officer then showed him his penis, saying "Here, suck this", before urinating over him; and that he was threatened with a blowlamp and then a syringe (see paragraph 24 above). Besides the violent nature of the above acts, the Court is bound to observe that they would be heinous and humiliating for anyone, irrespective of their condition.

104. The Court notes, lastly, that the above events were not confined to any one period of police custody during which – without this in any way justifying them – heightened tension and emotions might have led to such excesses. It has been clearly established that Mr Selmouni endured repeated and sustained assaults over a number of days of questioning (see paragraphs 11-14 above).

105. Under these circumstances, the Court is satisfied that the physical and mental violence, considered as a whole, committed against the applicant's person caused "severe" pain and suffering and was particularly serious and cruel. Such conduct must be regarded as acts of torture for the purposes of Article 3 of the Convention.

3. Conclusion

106. There has therefore been a violation of Article 3.

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

107. The applicant alleged that the proceedings in respect of his complaint against the police officers were not conducted within a reasonable time as required by Article 6 § 1 of the Convention, the relevant part of which is worded:

> "1. In the determination of his civil rights and obligations …, everyone is entitled to a … hearing within a reasonable time by [a] … tribunal …"

A. Period to be taken into consideration

108. The applicant submitted that the period to be taken into consideration had begun on 29 November 1991, the date on which he was brought before the investigating judge following his period in police custody, or, at the very latest, on 11 December 1991, the date of the Bobigny investigating judge's order transmitting the expert medical report to the public prosecutor's office. The applicant submitted that since the investigating judge had taken the initiative of appointing an expert, he could legitimately assume that the case would be dealt with by the judicial authorities. Such an obligation was expressly laid down, moreover, by Article 12 of the United Nations Convention against Torture, under which the relevant authorities were required to conduct a prompt investigation wherever there was reasonable ground to believe that an act of torture had been committed. The applicant contended further that his complaint of 1 December 1992 had been explicit and unequivocal. He therefore submitted that the date of registration of his complaint and application to join the proceedings as a civil party could not be considered to be the date on which the proceedings had commenced.

109. The Government, for their part, indicated that the proceedings had begun on 15 March 1993, the date on which the criminal complaint and

application to join the proceedings as a civil party had actually been lodged with the investigating judge.

110. The Commission considered that the proceedings had not begun until 15 March 1993, the date on which the applicant's complaint was registered.

111. The Court considers that the period to be taken into consideration in examining the length of the proceedings with regard to the "reasonable time" requirement laid down in Article 6 § 1 began when the applicant expressly lodged a complaint while being interviewed by an officer of the National Police Inspectorate, that is, on 1 December 1992 (see paragraph 24 above). The Court notes that this simple form of criminal complaint is a remedy afforded by French law and that the public prosecutor was informed of the applicant's complaint as early as 2 December 1992, when the record of the interview by the officer was transferred to him (see paragraph 25 above). Having regard to the nature and extreme seriousness of the alleged acts, the Court does not consider that it should take as the starting-point 1 February 1993, the date on which the applicant lodged a criminal complaint and an application to join the proceedings as a civil party (see paragraph 28 above and the Tomasi judgment cited above, pp. 20 and 43, §§ 46 and 124 respectively) or, *a fortiori*, the date on which that complaint and application were registered.

B. Reasonableness of the length of the proceedings

112. The reasonableness of the length of proceedings is to be assessed in the light of the particular 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 and the conduct of the applicant and of the relevant authorities (see, among many other authorities, the Vernillo judgment cited above, pp. 12-13, § 30, and the Acquaviva v. France judgment of 21 November 1995, Series A no. 333-A, pp. 15-16, § 53).

1. Arguments before the Court

113. The applicant submitted that the length itself could not be explained either by the complexity of the case or by his conduct. As regards the conduct of the judicial authorities, the applicant distinguished between two different periods. From 29 November 1991 to 27 April 1994 the authorities' conduct would have been relatively diligent if they had not waited too long before having him interviewed by an officer of the National Police Inspectorate and requesting that the case be transferred to another court. The second period had lasted from 27 April 1994 to the present. During that period the judicial authorities had failed to show any diligence in the conduct of the proceedings, notwithstanding the seriousness of the facts alleged.

114. The Government acknowledged that the case was not in itself particularly complex from a legal point of view, but submitted that the very serious nature of the facts and the status of the persons charged had justified handling the proceedings in a special way, which had contributed to prolonging them. In the present case it had been deemed necessary to order that the case be transferred to a different court out of a concern for the "proper administration of justice" (see the Boddaert v. Belgium judgment of 12 October 1992, Series A no. 235-D). As to the conduct of the applicant himself, the Government agreed with the Commission that he had not contributed to prolonging the length of the proceedings.

With regard to the conduct of the judicial authorities, the Government submitted that the investigation had been conducted without interruption until 1 March 1994, the date on which the Bobigny investigating judge had sent the file to the public prosecutor's office. During the phase when the case was pending in a different court the authorities had also acted diligently. After 22 June 1994, the date on which an investigating judge at the Versailles *tribunal de grande instance* was appointed, the Government admitted that there had been delays in the conduct of the case, but submitted that they were not attributable to the investigating judge alone.

The Government did not dispute that the overall length of the proceedings had been excessive, whereas the seriousness of the allegations had undoubtedly called for special diligence throughout the investigation.

115. The Commission considered that the case was not particularly complex, notwithstanding the extremely serious nature of the facts and the status of the persons ultimately charged, namely police officers accused of acts committed in the performance of their duties. As regards the applicant's conduct, there was nothing to suggest that he had contributed to prolonging the proceedings. As regards the judicial authorities' conduct, the Commission also considered that the case had been handled differently according to the period under consideration. On the one hand, it had been conducted with due diligence until 22 June 1994, the date on which an investigating judge at the Versailles *tribunal de grande instance* was appointed. On the other hand, there had been a second period, coinciding with the Versailles investigating judge's handling of the investigation, in which the authorities had failed to take all positive measures and employ the necessary diligence, regard being had to the seriousness of the allegations and the length of time which had elapsed since the events in issue.

2. The Court's assessment

(a) Complexity of the case and conduct of the applicant

116. The Court agrees with the applicant on this point. Thus, neither the complexity of the case nor the applicant's conduct justifies the length of the proceedings.

(b) Conduct of the judicial authorities

117. The Court notes that the proceedings, which are still pending since an appeal on points of law may be brought, have already lasted more than six years and seven months. As it has already noted in respect of the preceding complaint, the Court reiterates that where an individual has an arguable claim that there has been a violation of Article 3, the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see paragraph 79 above).

Irrespective of the Government's acknowledgment that, regard being had to the seriousness of the alleged facts, the overall length of the proceedings was excessive (see paragraph 114 above), the Court considers that its conclusions with regard to the admissibility of the complaint based on Article 3, in particular the finding that a number of delays were attributable to the judicial authorities (see paragraph 78 above), result in a finding that this complaint is well-founded.

(c) Conclusion

118. Having regard to all the evidence, the Court considers that the "reasonable time" prescribed by Article 6 § 1 was exceeded.

Accordingly, there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

119. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

120. The applicant claimed 750,000 French francs (FRF) for personal injury. That amount comprised general compensation for the injuries occasioned by the violence he had endured during police custody and special compensation for the effects on his visual acuity, the condition of his eye not yet having stabilised. He claimed FRF 1,500,000 for non-pecuniary damage resulting from his treatment in police custody, the length of the proceedings and the impossibility of obtaining a transfer to the Netherlands to serve his sentence there.

121. The French Government submitted, having regard both to the lack of any distinction between the damage sustained as a result of violations of Article 3 and Article 6 and to the fact that proceedings were in progress before the domestic courts, that the question of the application of Article 41 was not ready for decision.

122. The Delegate of the Commission made no observations.

123. The Court first reiterates its finding that the applicant has neither proved that he was raped nor established a causal link between the violence suffered and the loss of visual acuity relied on (see paragraph 90 above). Nevertheless, it finds, having regard, *inter alia*, to the five days' *ITTP* (see paragraph 31 above) and, in part, to his pain and suffering, that the applicant sustained personal injury in addition to non-pecuniary damage. Accordingly, having regard to the extreme seriousness of the violations of the Convention of which Mr Selmouni was a victim, the Court considers that he suffered personal injury and non-pecuniary damage for which the findings of violations in this judgment do not afford sufficient satisfaction. It considers, having regard to its previous conclusions, that the question of the application of Article 41 is ready for decision and, making its assessment on an equitable basis as required by that Article, it awards him FRF 500,000.

B. Request for transfer to the Netherlands

124. The applicant requested a transfer to the Netherlands to serve the remainder of his sentence there.

125. The Netherlands Government, having regard to the circumstances of the case, supported the applicant's request, observing that the two States concerned are parties to the Convention on the Transfer of Sentenced Persons of 21 March 1993.

126. The Court reiterates that Article 41 does not give it jurisdiction to make such an order against a Contracting State (see, for example, *mutatis mutandis*, the Saïdi v. France judgment of 20 September 1993, Series A no. 261-C, p. 57, § 47, and the Remli judgment cited above, p. 575, § 54).

C. Costs and expenses

127. The applicant claimed, on the basis of his receipts, FRF 203,814 in respect of his costs and expenses of representation. He broke the sum down as follows: FRF 90,450 for the proceedings in the Versailles courts and FRF 113,364 for the proceedings before the Convention institutions, less the sums awarded in legal aid by the Commission and the Court.

128. The Government submitted that the question of the application of Article 41 was not ready for decision.

129. The Delegate of the Commission made no observations.

130. The Court considers reasonable the applicant's claim for costs and expenses incurred before the Commission and the Court, namely FRF 113,364. It awards him that amount in full, less the amounts received in legal aid from the Council of Europe which have not already been taken into account in the claim.

D. Default interest

131. 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 3.47% per annum.

E. Request for a declaration that the sums in question should be exempt from attachment

132. The applicant pointed out that he had been ordered to pay, jointly and severally with the other persons convicted in the proceedings against them, a customs fine of twelve million French francs. Accordingly, the applicant asked the Court to specify in its judgment that the sums awarded under Article 41 should be exempt from attachment.

133. The Court considers that the compensation fixed pursuant to Article 41 and due by virtue of a judgment of the Court should be exempt from attachment. It would be incongruous to award the applicant an amount in compensation for, *inter alia*, ill-treatment constituting a violation of Article 3 of the Convention and costs and expenses incurred in securing that finding if the State itself were then to be both the debtor and creditor in respect of that amount. Although the sums at stake were different in kind, the Court considers that the purpose of compensation for non-pecuniary damage would inevitably be frustrated and the Article 41 system perverted if such a situation were to be deemed satisfactory. However, the Court does not have jurisdiction to accede to such a request (see, among other authorities, the Philis v. Greece judgment of 27 August 1991, Series A no. 209, p. 27, § 79, and the Allenet de Ribemont v. France judgment of

7 August 1996, *Reports* 1996-III, p. 910, §§ 18-19). It must therefore leave this point to the discretion of the French authorities.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection that domestic remedies had not been exhausted;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings;

4. *Holds* that the respondent State is to pay the applicant, within three months, 500,000 (five hundred thousand) French francs for personal injury and non-pecuniary damage and 113,364 (one hundred and thirteen thousand three hundred and sixty-four) French francs for costs and expenses, on which sums simple interest at an annual rate of 3.47% shall be payable from the expiry of the above-mentioned three months until settlement;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 28 July 1999.

Luzius WILDHABER
President

Maud DE BOER-BUQUICCHIO
Deputy Registrar