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

COURT (CHAMBER)

CASE OF AMUUR v. FRANCE

(Application no. 19776/92)

JUDGMENT

STRASBOURG

25 June 1996

In the case of Amuur v. France [1],

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

Mr R. BERNHARDT, *President*,
Mr L.-E. PETTITI,
Mr R. MACDONALD,
Mr C. RUSSO,
Mrs E. PALM,
Mr J.M. MORENILLA,
Mr J. MAKARCZYK,
Mr P. KURIS,
Mr U. LOHMUS,

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

Having deliberated in private on 24 January, 22 February and 20 May 1996, Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 1 March 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 19776/92) against France lodged with the Commission under Article 25 (art. 25) by four Somali nationals, Mr Mahad Abdi Amuur, Miss Lahima Amuur, Mr Abdelkader Abdi Amuur and Mr Mohammed Abdi Amuur, on 27 March 1992.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by

[1] The case is numbered 17/1995/523/609. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

[2] Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently

the respondent State of its obligations under Article 5 of the Convention (art. 5).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the lawyer who had represented the applicants before the Commission stated that she was unable to contact them but that the terms of the authority to act that had been produced before the Commission also covered the proceedings before the Court. On 5 May 1995 the President of the Court informed her that it was not necessary to produce fresh authority to act.

3. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 para. 4 (b)). On 5 May 1995, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr R. Macdonald, Mr C. Russo, Mrs E. Palm, Mr J.M. Morenilla, Mr J. Makarczyk, Mr P. Kuris and Mr U. Lohmus (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

4. As President of the Chamber (Rule 21 para. 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the French Government ("the Government"), the applicants' lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). The applicants' and the Government's memorials were received by the registry on 26 and 29 September 1995 respectively. On 3 November the Secretary to the Commission informed the Registrar that the Delegate did not intend to submit written observations.

On 22 December 1995 the applicants' lawyers filed an additional memorial setting out the applicants' claims under Article 50 of the Convention (art. 50).

On 16 January 1996 the President decided, having regard to the particular circumstances of the case, to allow the request for legal aid that the lawyers had lodged on the applicants' behalf (Rule 4 of the Addendum to Rules of Court A).

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 23 January 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr J.-F. DOBELLE, Deputy Director of Legal Affairs,
Ministry of Foreign Affairs, *Agent*,
Mr J. LAPOUZADE, administrative court judge on secondment
to the Legal Affairs Department,
Ministry of Foreign Affairs,
Mrs M. PAUTI, Head of the Comparative and International
Law Office, Department of Public Freedoms

and LegalAffairs, Ministry of the Interior, *Advisers*;
(b) for the Commission
Mr A. WEITZEL, *Delegate*;
(c) for the applicant
Ms P. TAELMAN, *avocate*,
Ms D. MONGET-SARRAIL, *avocate*,
Ms L. ROQUES, avocate, *Counsel*.

The Court heard addresses by Mr Weitzel, Ms Taelman, Ms Roques and Mr Dobelle. The applicants' lawyers produced documents at the hearing.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

6. The applicants, Mahad, Lahima, Abdelkader and Mohammed Amuur, are Somali nationals. They are brothers and sister born respectively in 1970, 1971, 1973 and 1975.

A. Refusal of leave to enter French territory and of applications for refugee status

7. The applicants arrived at Paris-Orly Airport on 9 March 1992 on board a Syrian Airlines flight from Damascus (Syria), where they had stayed for two months after travelling there via Kenya. They asserted that they had fled Somalia because, after the overthrow of the regime of President Siyad Barre, their lives were in danger and several members of their family had been murdered. Five of their cousins and thirteen other Somali nationals (including eleven children) also arrived, some on the same flight and others from Cairo on 14 March. However, the airport and border police refused to admit them to French territory, on the ground that their passports had been falsified, and held them at the Hôtel Arcade, part of which had been let to the Ministry of the Interior and converted for use as a waiting area for Orly Airport.

According to the applicants, police officers would drop them off at the airport's Espace lounge very early in the morning and take them back to the Hôtel Arcade in the evening.

8. On 12 March, in accordance with Article 12 of Decree no. 82-442 of 27 May 1982 (see paragraph 16 below), the Minister of the Interior considered an application by the applicants for leave to enter under the right of asylum.

The applicants were granted legal aid as from 24 March, when CIMADE, a humanitarian organisation, which had in the meantime inquired about their situation, put them in contact with a lawyer.

9. On 25 March the applicants asked the French Office for the Protection of Refugees and Stateless Persons ("the OFPRA") to grant them refugee status pursuant to the Geneva Convention of 28 July 1951. On 31 March the OFPRA ruled that it lacked jurisdiction because the applicants had not obtained a temporary residence permit.

10. On 26 March the applicants applied to the urgent applications judge at the Créteil tribunal de grande instance at short notice seeking an order for their release from confinement at the Hôtel Arcade, which, they asserted, constituted a flagrantly unlawful act (voie de fait).

B. The applicants' return to Syria

11. On 29 March at 1.30 p.m., after the Minister of the Interior had refused them leave to enter, the applicants were sent back to Syria, which, according to the Government, had agreed to take them. The other eighteen Somali nationals (see paragraph 7 above), who had not been sent back, were recognised as political refugees by the OFPRA in a decision of 25 June 1992.

On 10 June the United Nations High Commissioner for Refugees ("the HCR") sent the Ministry of the Interior the following fax:

> "The four persons were allowed to re-enter Syrian territorywithout difficulty, the French Embassy having obtained guaranteesto that effect from the relevant Syrian authorities. The four Somali nationals were supposed to get in touch with our officelater for their status to be determined, but to date we haveheard nothing from them. We shall keep you informed of anyfurther developments."

Before the Commission the applicants alleged that these guarantees had been given after their expulsion from France.

The Government stated at the hearing before the Court that on 29 July 1992 they had received from the HCR a further fax, worded as follows:

> "The Damascus delegation of the United Nations High Commissionerfor Refugees has just informed us that the four members of theAmuur family had recently been recognised as refugees by the HCR,under paragraph 68 of its Statute ... As Syria grants asylum topersons recognised as refugees by the HCR under its Statute,these Somali nationals were not in danger of being refused entryand sent to their country of origin."

C. The order of the Créteil tribunal de grande instance

12. On 31 March the Créteil tribunal de grande instance issued an order under the expedited procedure in which it ruled that the applicants'

detention was unlawful and directed that they be released. The relevant part of the court's decision reads as follows:

> "Although the lawfulness of refusals to admit aliens ... cannotbe reviewed by an urgent applications judge, ... the currentdetention by order of the Minister of the Interior on premises which are, moreover, not situated in the international zone, isnot provided for by any legislation, as is indeed implicitlyacknowledged by the Minister of the Interior.
>
> Furthermore, under the legislative and constitutional provisionscurrently applicable in France, detention may not be ordered bythe administrative authorities in cases other than those providedfor in Article 35 bis of the 1945 Ordinance, which in any event makes such detention subject to supervision by the ordinary courts.
>
> In French law as it stands at present, therefore, and whateverthe factual circumstances surrounding the entry of the aliens concerned, the applicants must be considered to have been arbitrarily deprived of their liberty; it follows that a flagrantly unlawful act is being committed which it is the dutyof the urgent applications judge to bring to an end.
>
> The Minister of the Interior is accordingly ordered to release the applicants."

No appeal against the above order was lodged by State Counsel's Office.

D. The appeal to the Refugee Appeals Board

13. In the meantime, on 30 March, the applicants had appealed to the Refugee Appeals Board. They sought a ruling that the Minister of the Interior's decision refusing them leave to enter French territory and the order that they be sent back to Syria were contrary to section 5 (b) of the Law of 25 July 1952 on the suspensive effect of appeals to the Appeals Board, Article 31 para. 1 of the Geneva Convention, which prohibited the imposition of criminal penalties for the unlawful entry or residence of refugees, and Article 33 para. 1 of the same Convention, which prohibited turning away a refugee to a country where his life would be in peril.

14. On 17 April 1992 the Appeals Board found against the applicants. It ruled that the decisions to remove them from French territory were not incompatible with the rule that appeals had a suspensive effect as the appeal had been lodged after the decisions had been carried out, the applicants had not been prosecuted and the French Government had obtained assurances concerning the applicants' life and liberty from the Syrian authorities.

II. RELEVANT DOMESTIC LAW

A. Applications for refugee status

15. Under a circular from the Prime Minister dated 17 May 1985, on asylum-seekers, the temporary admission to France of aliens seeking asylum requires the issue of two documents in turn: a temporary residence permit "for the purpose of making an application to the OFPRA", valid for one month, and a receipt bearing the words "Asylum applied for", valid as a temporary residence and work permit for three months and renewable. However, an application to the OFPRA can be made only by persons given leave to enter French territory, and the decision to admit an alien is left to the discretion of the Minister of the Interior.

16. Under the procedure laid down in Decree no. 82-442 of 27 May 1982, which was in force at the material time, "Where immigration control is carried out by officers of the national police, any decision to refuse an alien leave to enter France shall be taken ... by the officer in charge of the checkpoint ..."; Article 12 of the decree provides: "Where an alien arriving at the border asks for asylum, a decision to refuse leave to enter France may be taken only by the Minister of the Interior, after the Minister of Foreign Affairs has been consulted." It was the Minister of the Interior's practice to request the opinion, on an advisory basis, of the representative of the HCR.

17. Article 5, third paragraph, of Ordinance no. 45-2658 of 2 November 1945 on the conditions of aliens' entry into France and residence there provides:

> "Every refusal of leave to enter must be conveyed in a writtendecision, ... setting out reasons specific to the facts of thecase, one copy of which shall be given to the person concerned.An alien who has been refused entry shall be given theopportunity to inform or have informed the person whom he hassaid he intended to visit, his consulate or the lawyer of his choice."

Law no. 89-548 of 2 August 1989 added to the foregoing provisions the following paragraph, which was applicable at the material time:

> "In no circumstances may refusal of entry give rise t orepatriation against the will of the person concerned before oneclear day has elapsed. An alien who has been refused leave to enter may be held on premises not under the authority of the prison service and for the time strictly necessary to arrange his departure, as provided in Article 35 bis."

18. Article 35 bis of the Ordinance of 2 November 1945, in force at the material time, provided:

> "An alien may be held, if this is absolutely necessary, by areasoned written decision of the Prefect, on premises not underthe authority of the prison service and for the time strictlynecessary to arrange his departure, where:

1. he is not able to comply immediately with a decision torefuse him leave to enter French territory; or

2. being subject to a deportation order, he is unable to leave French territory immediately; or

3. being due to be expelled, he is unable to leave French territory immediately.

For the application of sub-paragraph 1 of this Article, thePrefect may authorise an official having the status of a seniorlaw-enforcement officer (officier de police judiciaire) to signthe decision on his behalf.

State Counsel shall be informed of the decision immediately.

The alien shall immediately be informed of his rights through aninterpreter if he does not understand French.

When twenty-four hours have elapsed from the decision to hold,the case shall be brought before the President of the tribunalde grande instance or a judge designated by him, who, afterhearing the person concerned in the presence of his lawyer, if any, or after the lawyer has been duly informed, shall make anorder for one or more of the supervision and control measures necessary to ensure his departure listed below:

Surrender to the police or gendarmerie of all identity documents,in particular his passport, in exchange for a receipt valid asproof of identity;

Compulsory residence in a specified place;

In exceptional cases, holding for a further period on thepremises mentioned in the first paragraph of this Article. The extension order shall run from the expiry of the twenty-four-hourperiod laid down in this paragraph.

These measures shall cease to apply at the latest when six dayshave elapsed since the issue of the order mentioned above."

B. Holding in the international zone

1. The circular of 26 June 1990

19. At the material time the practice of holding in the international zone, also called the transit zone, was the subject of a circular from the Minister of the Interior (unpublished) of 26 June 1990 on the procedures for refusing aliens leave to enter France. The relevant passages of the circular read as follows:

"... An alien who has been refused leave to enter and is waitingto be sent away has the right to freedom of movement inside theinternational zone, where such a zone exists and has facilitiessuitably adapted to the types of surveillance and accommodationrequired for the alien in question. If so, it will be necessaryto provide

accommodation and take the necessary measures toensure that he does not enter French territory

...

III.2.1. Holding in the international zone

In practice international zones are to be found mainly at certainports and airports.

...

At airports the international zone means the sealed-off area (or one that can be sealed off) used for the arrival of internationalflights and situated between the passengers' point of arrival andthe police checkpoints.

Alternatively, a hotel situated in the immediate proximity of theport or airport may be used to accommodate aliens refused entryto whom Article 35 bis of the Ordinance of 2 November 1945 hasnot been applied, but transfer thereto shall not be deemed toconstitute entry into the territory. The aliens concerned shallbe informed of the above conditions.

...

Where aliens who have been refused leave to enter are held in theinternational zone, the immigration control authorities shallcarry out appropriate surveillance, but this may in nocircumstances take the form of total isolation in a locked room.

...

III.2.3. Aliens' rights

...

Consequently, in all cases, an alien who has been refused entrywill have the possibility, once the relevant decision has beentaken, of informing or sending word to the person living at theaddress to which he has indicated that he intends to travelaccording to the statements recorded at the time of notification,to his consulate or to a lawyer of his own choice. In practice,the services that have refused entry will be responsible forenabling the alien concerned to communicate with the personslisted above. You will therefore allow him access to a telephoneand let him use it to seek the information he may require, itbeing understood that calls outside France will not be permittedand that the conversation must remain reasonable in length.

...

III.2.5. Asylum-seekers

...

While it is not necessary to describe the procedure forprocessing an application for asylum at the frontier, no orderfor administrative detention may be issued in respect of

theperson concerned until a refusal of leave to enter, if there isone, has been served on him.

Where an alien declares that he seeks political asylum when hehas already been served with refusal of leave to enter, but hasnot yet entered the territory, the request shall be regarded asan application for asylum at the frontier and brought as soon aspossible to the attention of the Department of Public Freedomsand Legal Affairs which, after investigating the case, will makeknown the decision taken pursuant to the provisions of Article 12of Decree no. 82-442 of 27 May 1982.

..."

2. The Law of 6 September 1991

20. The Law of 6 September 1991 amending the Ordinance of 2 November 1945 on aliens' conditions of entry into France and residence there was the first attempt to legislate on the question of transit zones. When the draft version of section 8 of the Law of 6 September 1991 was presented to Parliament, the Minister of the Interior declared: "aliens in that situation are not detained (retenus), since they are not on French territory, as they are free to leave at any time" (Official Gazette, 19 December 1991, p. 8256).

Section 8 (1) of the Law inserted into the above-mentioned Ordinance an Article 35 quater, which provided:

"... an alien who has been refused leave to enter Frenchterritory at an airport or port, or who has sought asylum there,may be held in the transit zone of that airport or port for thetime strictly necessary to arrange his departure or to considerhis application for leave to enter the territory, and for notmore than twenty days. This zone, whose limits shall be laiddown in a decision of the Prefect, shall extend from the pointsof embarkation or disembarkation on French territory to thecheckpoints for persons entering and leaving the territory. Itmay be enlarged to include within its perimeter one or moreplaces of accommodation ... The order to hold in the transitzone shall be made in a reasoned written decision of the head ofimmigration control or an official having the rank of sergeantdesignated by him. This decision shall be entered in a registerrecording the alien's civil status and the holding conditions;... the alien shall be free to leave the transit zone at any timefor any foreign destination of his choice ..."

3. The Constitutional Council's decision of 25 February 1992

21. The Constitutional Council, on an application by the Prime Minister under Article 61 of the Constitution, ruled on 25 February 1992 that section 8 of the Law of 6 September 1991 was unconstitutional for the following reasons:

"It should be noted in this connection that holding an alien inthe transit zone under the conditions laid down in Article 35quater (I), inserted in the Ordinance of 2 November 1945 bysection 8 (1) of the referred law, does not entail a degree ofrestriction of movement comparable with that which would

resultfrom placing him in a detention centre under Article 35 bis ofthe Ordinance.

However, holding an alien in the transit zone does nevertheless,through the combined effect of the degree of restriction ofmovement it entails and its duration, impinge on the personalliberty of the person concerned within the meaning of Article 66of the Constitution. Although the power to order an alien to beheld may be conferred by law on the administrative authorities,the legislature must make appropriate provision for the courtsto intervene, so that they may carry out their responsibilitiesand exercise the supervisory power conferred on them.

Whatever the safeguards under the provisions of Article 35 quateras regards the holding of aliens in the transit zone, thoseprovisions contain no requirement that the courts must interveneto decide whether or not a person should be held for longer, suchas would enable them to determine, on the facts of the case,whether such a measure was necessary. In any event, a personcannot be held for more than a reasonable period.

It follows that, as it confers on the administrative authorities the power to hold an alien in the transit zone for a lengthy period, without providing for speedy intervention by the courts,Article 35 quater, as inserted into the Ordinance of 2 November 1945 by section 8 (1) of the referred law, is, as itstands, unconstitutional."

4. The judgment of the Paris tribunal de grande instance of 25 March 1992

22. On 25 March 1992 the Paris tribunal de grande instance, giving judgment in an action for damages brought by three asylum-seekers who had been held in the international zone, in the Hôtel Arcade at Roissy Airport, ruled as follows:

> "... holding an alien on the premises of the Hôtel Arcade,given the degree of restriction of movement it entails andits duration - which is not laid down by any provision anddepends solely on an administrative decision, without anyjudicial supervision whatsoever - impinges on the libertyof the person concerned. Total deprivation of freedom tocome and go is not necessary for an infringement of thatfreedom to be made out; it is enough if, as in the instantcase, a person's liberty has been seriously restricted asa result of the relevant decision.
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> ... we reject as ill-founded the defendant's submissionthat the complaint of an interference with personal libertyshould be dismissed because the alien was merely preventedfrom entering France, as he was detained in a place whichhad to be regarded as an 'extension' of the airport'sinternational zone. No evidence has been adduced of theexistence of any provision of national or international lawconferring any extraterritorial status on all or part ofthe premises of the Hôtel Arcade - which lies, moreover,outside the airport's perimeter and the area under customscontrol.
>
> ... as matters stand, this zone, which is a legal fiction,cannot be exempted from the fundamental principles ofpersonal liberty.

> ... the indisputable prerogative of the administrativeauthorities, who in the field of immigration control haveexclusive authority to refuse leave to enter Frenchterritory - even, subject to the conditions set out inArticle 12 of the Decree of 27 May 1982, in the case of anapplication for asylum - does not, however, allow theMinister of the Interior to restrict the liberty of analien save in the circumstances and under the conditionsprescribed by law.
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> ...
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> ... under present French legislation on aliens, theadministrative authorities may not temporarily deprive analien of his freedom to come and go except in thecircumstances and in accordance with the procedures laiddown in Article 5 (last paragraph) and Article 35 bis ofthe Ordinance of 2 November 1945. These provisions apply,in particular, to refusal of leave to enter France. Theyfix the maximum period of administrative detention(rétention) and provide that it cannot be extended beyondtwenty-four hours without the authorisation of thePresident of the tribunal de grande instance.
>
> ... in the absence of any specific rules governing the holdingof an asylum-seeker in the international zone for the timestrictly necessary for the administrative authorities to considerwhether his application is admissible, those authorities are not,moreover, entitled to invoke to their advantage a necessary,general right to hold an alien in that supervised zone."

State Counsel's Office appealed against the above judgment to the Paris Court of Appeal. However, on 23 September 1992 the case was struck out of the list on the ground that the appellant had not submitted final pleadings within the time-limit.

5. The Law of 6 July 1992

23. Following the above-mentioned decision of the Constitutional Council (see paragraph 21 above), Parliament adopted Law no. 92-625 of 6 July 1992, which was itself amended by Law no. 94-1136 of 27 December 1994. This text, which - like the previous version (see paragraph 20 above) - inserted an Article 35 quater into the Ordinance of 2 November 1945, provides:

> "I. An alien who arrives in France by rail, sea or air and who(a) is refused leave to enter French territory or (b) applies forasylum may be held in a waiting zone situated at a railwaystation open to international traffic and designated byregulation, a port or an airport, for the time strictly necessaryto arrange his departure and, if he is an asylum-seeker, toinvestigate whether his application is manifestly ill-founded.
>
> He shall be informed immediately of his rights and duties, ifnecessary through an interpreter. This shall be recorded in theregister mentioned below, which shall be countersigned by theperson concerned.
>
> The limits of the waiting zone shall be laid down by the State'srepresentative in the département. It shall extend from thepoints of embarkation or disembarkation to the immigrationcontrol checkpoints. It may include within its perimeter, ornear the

station, port or airport, one or more places ofaccommodation providing the aliens concerned with hotel-type services.

II. The order to hold in the waiting zone, for a period whichmay not exceed forty-eight hours, shall be made in a reasonedwritten decision of the head of immigration control or anofficial having the rank of sergeant designated by him. This decision shall be entered in a register recording the alien'scivil status and the date and time when the decision to hold wasserved on him. State Counsel shall be informed of the decision without delay. It may be renewed under the same conditions andfor the same period.

The alien shall be free to leave the waiting zone at any time forany destination situated outside France. He may request theassistance of an interpreter and a doctor and communicate witha lawyer or any person of his choice.

III. Holding in the waiting zone after four days have elapsedsince the initial decision may be authorised, by the Presidentof the tribunal de grande instance, or a judge delegated by him,for a period not exceeding eight days. The administrativeauthority shall set out in its application the reasons why it hasnot been possible to repatriate the alien or, if he has appliedfor asylum, to admit him, and the time necessary to ensure hisdeparture from the waiting zone. The President of the tribunalde grande instance or his delegate shall give a ruling in theform of an order, after hearing the person concerned in thepresence of his lawyer, if any, or after the lawyer has been dulyinformed. The alien may request the President or his delegate to assign him a lawyer under the legal-aid scheme. He may alsoask the President or his delegate for the assistance of aninterpreter and for a copy of his file. The President or hisdelegate shall rule at the seat of the tribunal de grande instance, except in the districts designated by decree issuedafter consultation of the Conseil d'Etat. In such a case,without prejudice to the application of Article 435 of the New Code of Civil Procedure, he shall give his ruling in public ina hearing room specially created inside the perimeter of the station, port or airport.

An appeal shall lie against the order to the President of theCourt of Appeal or his delegate, who must rule on the appeal, forwhich there is no particular required form, within forty-eighthours. Appeals may be lodged by the person concerned, State Counsel's Office and the representative of the State in thedépartement. The appeal shall not have suspensive effect.

IV. Exceptionally, holding in the waiting zone may be renewedbeyond twelve days, under the conditions laid down insection III, by the President of the tribunal de grande instanceor his delegate, for a period which he shall determine, which maynot exceed eight days.

V. During the whole of the time that the alien is held in thewaiting zone, he shall enjoy the rights set forth in the secondparagraph of section II. State Counsel and, after the first fourdays, the President of the tribunal de grande instance or hisdelegate may visit the waiting zone in order to verify theconditions of his confinement and inspect the register mentionedin section II.

The conditions for access to the waiting zone of the delegate ofthe United Nations High Commissioner for Refugees or hisrepresentatives and humanitarian associations shall be laid downin a decree issued after consultation of the Conseil d'Etat.

VI. Where holding in the waiting zone is not extended beyond thelimit fixed by the last decision to hold, the alien shall beauthorised to enter French territory on an eight-day visa. Hemust have left French territory by the time this limit expires,unless he obtains a provisional residence permit or a receipt fora residence permit application.

VII. The provisions of the present Article shall also apply toan alien who is in transit at a station, port or airport, wherethe carrier which was to have conveyed him to his country ofdestination refuses to let him embark or where the authoritiesof the country of destination have refused him leave to enter andhave sent him back to France.

VIII. Where the alien's departure from French territory cannotbe arranged from the station, port or airport to which thewaiting zone where he is being held is attached, he may betransferred to a waiting zone attached to any station, port orairport from which he can leave. Where the transfer decision must be taken within four days fromthe initial decision to hold in the waiting zone, it shall betaken under the conditions laid down in section II of the present Article.

Where transfer is envisaged after four days have elapsed sincethe initial decision to hold, the administrative authority shallinform the President of the tribunal de grande instance or hisdelegate at the time when it applies to them under the conditionslaid down in sections III and IV of the present Article.

In cases where authorisation has been given to prolong or renewholding in the waiting zone, the administrative authority shallinform the President of the tribunal de grande instance or hisdelegate and State Counsel of the necessity of transferring thealien to another waiting zone and carry out that transfer.

For the purpose of determining the length of a prolongation orrenewal of holding in the waiting zone, time shall continue torun notwithstanding a transfer of the alien to another waiting zone."

More precisely, the law of 27 December 1994 extended and relaxed the rules introduced by the Law of 6 July 1992. The procedure laid down in Article 35 quater of the 1945 Ordinance became applicable to aliens arriving in France by rail. The railway stations concerned, which must be "open to international traffic", are designated by an order of the Minister of the Interior and the limits of waiting zones are laid down by the State's representative in the département. In addition, the waiting zone is no longer defined as a disembarkation and control zone, exceptionally extended to immediately adjacent areas; it can now include, either within the perimeter or close to the station, port or airport, one or more places of accommodation providing aliens with hotel-type services. Moreover, in order to avoid all confusion between waiting zones as provided for in Article 35 quater of the 1945 Ordinance and the administrative detention centres mentioned in Article 35 bis thereof, the Law of 27 December 1994 specifies that the premises used for these two categories must be physically distinct and separate.

6. The Decree of 15 December 1992

24. Decree no. 92-1333 of 15 December 1992 lays down the procedural rules applicable to actions brought in accordance with Article 35 quater of the Ordinance of 2 November 1945 and provides for legal aid for aliens who are the subject of such proceedings.

Under this decree authorisation to hold an alien in the waiting zone for more than four or twelve days (see paragraph 23 above) must be sought from the President of the tribunal de grande instance having jurisdiction, in a reasoned application, which must be dated, signed and accompanied by all the relevant documents, from the head of the immigration control service. He must inform the alien of his right to choose a lawyer or have one assigned to him under the legal-aid scheme if the alien so requests. The application and the accompanying documents may be inspected by the alien's lawyer as soon as they are received by the registry. They may also be inspected, before the hearing, by the alien himself, who may be assisted by an interpreter if he does not understand French sufficiently well.

7. The Decree of 2 May 1995

25. Decree no. 95-507 of 2 May 1995 lays down the conditions for access by the HCR delegate or his representatives and by humanitarian associations to the waiting zone of railway stations open to international traffic, ports and airports, as defined by Article 35 quater of the Ordinance of 2 November 1945 (see paragraph 23 above).

In particular, it makes provision for representatives of the HCR and humanitarian associations, whose access to the waiting zone is conditional upon individual authorisation by the Minister of the Interior, to hold confidential interviews with the persons held there, and for these representatives and the Minister of the Interior to meet once a year to discuss the way the waiting zones are run.

III. WORK DONE BY THE COUNCIL OF EUROPE

A. The Parliamentary Assembly's report of 12 September 1991 on the arrival of asylum-seekers at European airports

26. On 12 September 1991 the Parliamentary Assembly of the Council of Europe drew up a report on the arrival of asylum-seekers at European airports. The report, which briefly surveyed the current situation in six large European airports visited by its author, included the following comments about Roissy-Charles-de-Gaulle Airport, Paris:

"Asylum-seekers present the request for asylum to border policeand the French Office for the Protection of Refugees andStateless Persons (Office français de protection des réfugiés etapatrides (OFPRA)) decides on the refugee status.

Neither interpreters nor legal assistance are available forasylum-seekers immediately after presenting the asylum request:assistance is allowed only after entry into France.

Asylum-seekers are detained in a so-called international zone atthe airport, which means that they are not yet on Frenchterritory and the French authorities are therefore not under alegal obligation to examine the request as they would be if arequest was made by someone already on French territory. The international zone has no legal background and must be considered as a device to avoid obligations.

During detention, no access to social workers and in fact nocommunication with the outside world exists. Moreover,asylum-seekers do not always have access to telephones. Onpermission from the border police, a chaplain can visitasylum-seekers. No recreational or educational facilities areput at the asylum-seekers' disposal.

No legal basis for detention exists and a maximum term is notprescribed by law. The French authorities claim thatasylum-seekers stay in this zone for a maximum of one week andthat children are seldom held. Some asylum-seekers have claimed to have spent six weeks waiting for the Ministry of the Interiorto decide whether their application is to be passed on to OFPRAor whether they will be sent back.

Asylum-seekers in the international zone sleep on the floor andon the plastic chairs. The airport provides them with meals andthere are a few showers for their use in the middle of the nightwhen they are not being used by others.

Due to lack of space at the airport itself, the international zone is extended to one of the floors of the nearby Arcade Hotel."

B. Recommendation No. R (94) 5 of the Committee of Ministers on guidelines to inspire practices of the member States of the Council of Europe concerning the arrival of asylum-seekers at airports, of 21 June 1994

27. In a recommendation adopted on 21 June 1994 the Committee of Ministers invited the member States of the Council of Europe to apply the following guidelines:

"...

Taking into account that the particular position ofasylum-seekers at the airports may entail specific difficulties,linked to the reception itself as well as the handling of their requests;

Considering that, without prejudice to other principlesapplicable in this field, guidelines based on the fundamentalprinciples in the field of human rights should inspire thepractices of member states with regard to the protection ofasylum-seekers at airports, and contribute to the development oflegislation and the establishment of an

administrativeinfrastructure concerning the reception of asylum-seekers in newhost countries,

...

3. ... each State preserves the possibility of sending anasylum-seeker to a third country subject to respect to theprovisions of the Geneva Convention Relating to the Status ofRefugees, in particular its Article 33, and with respect to theEuropean Convention on Human Rights, in particular its Article 3(art. 3).

...

5. The request shall be examined with all diligence required inorder not to prolong the stay of the applicant at the airportbeyond a period strictly necessary for the handling of such arequest.

...

9. When the asylum-seeker has to stay at the border pending adecision, he or she shall be received and accommodated in anappropriate place, whenever possible provided to that effect.

10. The asylum-seeker can be held in such a place only under theconditions and for the maximum duration provided for by law.

..."

C. Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 4 June 1992

28. During its visit to France from 27 October to 8 November 1991 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") visited a number of premises for the detention of aliens, including the border police posts at Roissy-Charles-de-Gaulle Airport and the Hôtel Arcade.

In its report, adopted on 4 June 1992, it made the following observations in particular:

"However, unlike the position where administrative detention(rétention) is concerned, there seems to be no legislativeprovision for any judicial supervision or statutory limit on thelength of time spent in the waiting zone in respect of personsrefused entry.

... on 1 October 1991 the Government set up a humanitarian aidbody - the International Migration Office ("the OMI").

The CPT wishes to emphasise how important it is that an effectiveappeal should lie against any refusal of leave to enter,particularly in order to protect the persons concerned againstthe risk of being turned away to a State where there are

seriousreasons to believe they might be subjected to ill-treatment.Consequently, the CPT would like to be given information aboutthe possibility of appealing against a refusal of leave to enter.In addition, it would like to have information about the averagelength of time spent on premises where persons refused entry areheld and the exact role of the OMI."

29. On 19 January 1993 the French Government supplied the CPT with the following information:

"...

2. The situation of persons refused entry: waiting zones in ports and airports

2.1. The Law of 6 July 1992 on waiting zones in ports andairports (Article 35 quater of the Ordinance of 2 November 1945,as amended, see Appendix 10), as was mentioned in the generalremarks above, laid down very precise conditions for the holdingof an alien refused leave to enter the territory.

2.2. The enactment in question affords aliens a number ofsafeguards concerning

(a) the length of time for which persons may be held in the waiting zone: this is strictly supervised by the ordinary courts and may not exceed the "reasonable" time prescribed by law. A court order is needed where a person is to be held for more than four days, and in no circumstances may the twenty-day limit be exceeded. It should be noted in this connection that the original period of twenty days that could elapse before the ordinary courts intervened has been reduced by this Law to four days only. In addition, the total maximum period has been substantially reduced, from thirty days to twenty days;

(b) the physical and legal conditions of holding in the waiting zone: holding a person entails a reasoned written decision of the head of immigration control, which must be entered in a register, the immediate notification of State Counsel and, after four days, a decision by the President of the tribunal de grande instance, the right of those two judicial officers to enter the waiting zone, the right to communicate with any person of one's choice, the right to assistance by an interpreter and a lawyer and the right to legal aid.

3. Judicial supervision and the length of time for which a person may be held in the waiting zone

3.1. As mentioned above, after four days a ruling must be givenby an ordinary court. It must reach its decision afterproceedings attended by all the safeguards expressly prescribed by law, and authorisation to hold may not be given for a period exceeding eight days. Exceptionally, the court may renew authorisation for a further eight days. In either case, an appeal against its decision will lie.

3.2. The practical effects of the Law, which came into force on13 July 1992, can already be assessed. At the request of theMinister of the Interior and Public Safety, a large number oforders (nearly forty) demarcating waiting zones have been issuedby the prefects of the départements in which there areinternational ports and airports.

3.3. As regards the time spent in the waiting zone, the twocategories of alien concerned should be distinguished.

3.4. Aliens refused entry and aliens whose journeys have beeninterrupted (no papers):

3.5. Before the Law was passed the time aliens in this categoryspent in the international zone was already less than four days.The general average, which is still less than four days at eachof the checkpoints concerned, is now 1.8 days.

3.6. In that respect the Law on waiting zones has hardlyaffected the length of time spent in them, as time is inevitablyneeded to find a place on a departing plane or ship.

..."

PROCEEDINGS BEFORE THE COMMISSION

30. The applicants Mahad, Lahima, Abdelkader and Mohammed Amuur and eighteen other Somali nationals applied to the Commission on 27 March 1992. They alleged breaches of Articles 3, 5, 6 and 13 of the Convention (art. 3, art. 5, art. 6, art. 13).

31. On the same day the President of the Commission indicated to the French Government, under Rule 36 of the Commission's Rules of Procedure, that it was desirable, in the interest of the parties and the proper conduct of the proceedings, to refrain from sending the applicants back to Somalia before 4 April 1992. In addition, he asked the French Government to supply certain information about what was going to be done with them.

On 2 April 1992 the Commission repeated the above indication in respect of those of the applicants who were still in France. Mahad, Lahima, Abdelkader and Mohammed Amuur had already been sent back to Syria on 29 March 1992.

32. On 18 October 1993 the Commission decided to strike out of its list those parts of the application (no. 19776/92) submitted by the other eighteen applicants, who had in the meantime been granted refugee status. It declared admissible the complaint that holding Mahad, Lahima, Abdelkader and Mohammed Amuur in the international zone of Paris-Orly Airport constituted unlawful detention, contrary to Article 5 para. 1 of the Convention (art. 5-1), and declared the remainder of the application inadmissible. In its report of 10 January 1995 (Article 31) (art. 31) it concluded, by sixteen votes to ten, that Article 5 (art. 5) was inapplicable and that there had therefore been no breach of that provision (art. 5). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment [3].

[3] For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-III), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

33. At the hearing the Government asked the Court to

> "dismiss the application as inadmissible: in chief, because theapplicants [could] not claim to be victims of a violation of therights set forth in the Convention within the meaning ofArticle 25 thereof (art. 25); in the alternative, because theapplication [was] incompatible ratione materiae with theprovisions of Article 5 para. 1 of the Convention (art. 5-1)".

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

34. According to the Government, the applicants are not victims within the meaning of Article 25 of the Convention (art. 25).

Invoking the subsidiary nature of the machinery set up by the Convention, the Government argued that for an individual to claim to be a victim of a violation of a right set forth in the Convention he must first have given the domestic courts the opportunity to declare that the alleged violation has occurred and to provide a remedy. As the Créteil tribunal de grande instance had given judgment in the applicants' favour on 31 March 1992, they could not reasonably maintain that the remedy before that court was not effective on the ground that the order under the expedited procedure had been made after they had been sent back to Syria. Their lawyer should have applied to the court earlier, the applicants having been in the transit zone since 9 March.

35. The Court notes that the Government raised this objection before the Commission, not as a separate issue but as part of their arguments concerning Article 5 (art. 5). It therefore considers that it has jurisdiction to deal with it, although the Commission, which had declared the complaint relating to that Article (art. 5) admissible, did not rule on the objection when determining the question of admissibility.

36. According to the Court's established case-law, the word "victim" in the context of Article 25 (art. 25) denotes the person directly affected by the act or omission in issue, the existence of a violation of the Convention being conceivable even in the absence of prejudice; prejudice is relevant only in the context of Article 50 (art. 50). Consequently, a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of

the Convention (see, among many other authorities, the Lüdi v. Switzerland judgment of 15 June 1992, Series A no. 238, p. 18, para. 34).

It is true that in this case the Créteil tribunal de grande instance ruled that holding the applicants in the transit zone at Paris-Orly Airport was unlawful and ordered their release. However, that decision was not made until 31 March, whereas the applicants had been held in the transit zone since 9 March and, above all, had been sent back to Syria on 29 March. As the applicants were not able to secure the assistance of a lawyer before 24 March (see paragraph 8 above), it would have been almost impossible for them to apply to the court any earlier.

With regard to the Government's argument that it was possible for the applicants to obtain compensation for the prejudice they had suffered, the Court considers that the haste with which they were sent back made the prospects for the institution of proceedings to that end unrealistic.

The objection must therefore be rejected.

II. ALLEGED VIOLATION OF ARTICLE 5 PARA. 1 (art. 5-1) OF THE CONVENTION

37. According to the applicants, holding them in the international zone at Paris-Orly Airport constituted deprivation of liberty contrary to Article 5 para. 1 (f) of the Convention (art. 5-1-f), which provides:

> "1. Everyone has the right to liberty and security of person.No one shall be deprived of his liberty save in the followingcases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent hiseffecting an unauthorised entry into the country or of a personagainst whom action is being taken with a view to deportation orextradition."

A. Existence of a deprivation of liberty

38. The applicants complained of the physical conditions of their "detention" in the transit zone. They maintained that these did not comply with Resolution (73) 5 of the Committee of Ministers of the Council of Europe on Standard Minimum Rules for the Treatment of Prisoners, or the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (see paragraph 28 above), or Recommendation No. R (94) 5 of the Committee of Ministers of 21 June 1994 (see paragraph 27 above). In addition, these conditions had been aggravated by the excessive length of their "detention", which was a decisive factor for assessment of the "deprivation of liberty" issue. They

also emphasised that under the relevant international conventions and national legislation they should, as asylum-seekers, have enjoyed special protection and more favourable treatment than unlawful immigrants. The detention of asylum-seekers could not be justified unless their application for asylum was considered manifestly ill-founded, which was clearly not so in the applicants' case, as the other members of their family were granted refugee status by the French Office for the Protection of Refugees and Stateless Persons (see paragraph 11 above).

39. According to the Government, the applicants' stay in the transit zone was not comparable to detention. They had been lodged in part of the Hôtel Arcade where the "physical conditions" of the accommodation were described as satisfactory even in the CPT's report. Their separation from the hotel's other residents had been justified by the concern to prevent them from evading surveillance by the airport and border police and settling unlawfully in France. The original reason why they were held and for the length of time they were held had been their obstinacy in seeking to enter French territory despite being refused leave to enter. They could not therefore "validly complain of a situation which they had largely created", as the Court itself had held in the Kolompar v. Belgium judgment of 24 September 1992 (Series A no. 235-C).

40. While admitting that the applicants' stay in the international zone was no different - when its length was taken into account - from "detention" in the ordinary meaning of that term, the Commission concluded that Article 5 (art. 5) was not applicable. It considered that the degree of physical constraint required for the measure concerned to be described as "deprivation of liberty" was lacking in this case.

41. The Court notes in the first place that in the fourth paragraph of the Preamble to its Constitution of 27 October 1946 (incorporated into that of 4 October 1958), France enunciated the right to asylum in "the territories of the Republic" for "everyone persecuted on account of his action in the cause of freedom". France is also party to the 1951 Geneva Convention Relating to the Status of Refugees, Article 1 of which defines the term "refugee" as "any person who [has a] well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion".

The Court also notes that many member States of the Council of Europe have been confronted for a number of years now with an increasing flow of asylum-seekers. It is aware of the difficulties involved in the reception of asylum-seekers at most large European airports and in the processing of their applications. The report of the Parliamentary Assembly of the Council of Europe, of 12 September 1991, is revealing on this point (see paragraph 26 above).

Contracting States have the undeniable sovereign right to control aliens' entry into and residence in their territory. The Court emphasises, however,

that this right must be exercised in accordance with the provisions of the Convention, including Article 5 (art. 5).

42. In proclaiming the right to liberty, paragraph 1 of Article 5 (art. 5-1) contemplates the physical liberty of the person; its aim is to ensure that no one should be dispossessed of this liberty in an arbitrary fashion. On the other hand, it is not in principle concerned with mere restrictions on the liberty of movement; such restrictions are governed by Article 2 of Protocol No. 4 (P4-2). In order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5 (art. 5), the starting-point must be his concrete situation, and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation of and restriction upon liberty is merely one of degree or intensity, and not one of nature or substance (see the Guzzardi v. Italy judgment of 6 November 1980, Series A no. 39, p. 33, para. 92).

43. Holding aliens in the international zone does indeed involve a restriction upon liberty, but one which is not in every respect comparable to that which obtains in centres for the detention of aliens pending deportation. Such confinement, accompanied by suitable safeguards for the persons concerned, is acceptable only in order to enable States to prevent unlawful immigration while complying with their international obligations, particularly under the 1951 Geneva Convention Relating to the Status of Refugees and the European Convention on Human Rights. States' legitimate concern to foil the increasingly frequent attempts to circumvent immigration restrictions must not deprive asylum-seekers of the protection afforded by these conventions.

Such holding should not be prolonged excessively, otherwise there would be a risk of it turning a mere restriction on liberty - inevitable with a view to organising the practical details of the alien's repatriation or, where he has requested asylum, while his application for leave to enter the territory for that purpose is considered - into a deprivation of liberty. In that connection account should be taken of the fact that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country.

Although by the force of circumstances the decision to order holding must necessarily be taken by the administrative or police authorities, its prolongation requires speedy review by the courts, the traditional guardians of personal liberties. Above all, such confinement must not deprive the asylum-seeker of the right to gain effective access to the procedure for determining refugee status.

44. The applicants arrived at Paris-Orly Airport from Damascus on 9 March 1992. They stated that they had fled their country of origin, Somalia, because they had been persecuted by the regime in power and their lives were in danger (see paragraph 7 above). As their passports had been

falsified, the airport and border police refused them leave to enter French territory. They were then held in the airport's transit zone (and its extension, the floor of the Hôtel Arcade adapted for the purpose) for twenty days, that is to say until 29 March, when the Minister of the Interior refused them leave to enter as asylum-seekers (see paragraph 11 above). They were immediately sent back to Syria without being able to make an effective application to the authority having jurisdiction to rule on their refugee status (see paragraph 9 above).

45. The Court notes that for the greater part of the above period the applicants, who claimed to be refugees, were left to their own devices. They were placed under strict and constant police surveillance and had no legal and social assistance - particularly with a view to completing the formalities relating to an application for political refugee status - until 24 March, when a humanitarian association, which had in the meantime been informed of their presence in the international zone, put them in contact with a lawyer. Moreover, until 26 March neither the length nor the necessity of their confinement were reviewed by a court (see paragraph 10 above).

The applicants' lawyer applied on that date to the Créteil tribunal de grande instance, which, in making an order under the expedited procedure on 31 March (see paragraph 12 above), described the applicants' confinement as an "arbitrary deprivation of liberty". In a more general context, namely consideration of the constitutionality of the Law of 6 September 1991, the Constitutional Council had already noted on 25 February 1992 the restriction on personal liberty caused by "the combined effect of the degree of restriction of movement [holding an alien in the transit zone] entails and its duration" (see paragraph 21 above). The period of confinement criticised by the Constitutional Council on that occasion was equivalent to the length of time the applicants were held.

46. In concluding that there was no deprivation of liberty, the Government and the Commission attached particular weight to the fact that the applicants could at any time have removed themselves from the sphere of application of the measure in issue. More particularly, the Government argued that although the transit zone is "closed on the French side", it remains "open to the outside", so that the applicants could have returned of their own accord to Syria, where their safety was guaranteed, in view of the assurances which the Syrian authorities had given the French Government. The Commission added that the applicants had not shown that their lives or physical integrity were in danger in Syria or that the French authorities had prevented them from boarding a plane bound for that country.

47. The applicants maintained that such reasoning would amount to binding the application of Article 5 (art. 5) to that of Article 3 of the Convention (art. 3); this would be to ignore the specific object of Article 5 (art. 5), and its wording, which had to be strictly construed; it would also

deprive Article 5 (art. 5) of any useful effect, particularly with regard to asylum applications.

48. The mere fact that it is possible for asylum-seekers to leave voluntarily the country where they wish to take refuge cannot exclude a restriction on liberty, the right to leave any country, including one's own, being guaranteed, moreover, by Protocol No. 4 to the Convention (P4). Furthermore, this possibility becomes theoretical if no other country offering protection comparable to the protection they expect to find in the country where they are seeking asylum is inclined or prepared to take them in.

Sending the applicants back to Syria only became possible, apart from the practical problems of the journey, following negotiations between the French and Syrian authorities. The assurances of the latter were dependent on the vagaries of diplomatic relations, in view of the fact that Syria was not bound by the Geneva Convention relating to the Status of Refugees.

49. The Court concludes that holding the applicants in the transit zone of Paris-Orly Airport was equivalent in practice, in view of the restrictions suffered, to a deprivation of liberty. Article 5 para. 1 (art. 5-1) is therefore applicable to the case.

B. Compatibility of the deprivation of liberty found established in the case with paragraph 1 of Article 5 (art. 5-1)

50. It remains to be determined whether the deprivation of liberty found to be established in the present case was compatible with paragraph 1 of Article 5 (art. 5-1). Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5 (art. 5), namely to protect the individual from arbitrariness (see, among many other authorities, the Kemmache v. France (no. 3) judgment of 24 November 1994, Series A no. 296-C, pp. 19-20, para. 42).

In laying down that any deprivation of liberty must be effected "in accordance with a procedure prescribed by law", Article 5 para. 1 (art. 5-1) primarily requires any arrest or detention to have a legal basis in domestic law. However, these words do not merely refer back to domestic law; like the expressions "in accordance with the law" and "prescribed by law" in the second paragraphs of Articles 8 to 11 (art. 8-2, art. 9-2, art. 10-2, art. 11-2), they also relate to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention.

In order to ascertain whether a deprivation of liberty has complied with the principle of compatibility with domestic law, it therefore falls to the

Court to assess not only the legislation in force in the field under consideration, but also the quality of the other legal rules applicable to the persons concerned. Quality in this sense implies that where a national law authorises deprivation of liberty - especially in respect of a foreign asylum-seeker - it must be sufficiently accessible and precise, in order to avoid all risk of arbitrariness. These characteristics are of fundamental importance with regard to asylum-seekers at airports, particularly in view of the need to reconcile the protection of fundamental rights with the requirements of States' immigration policies.

51. The applicants asserted that their detention had no legal basis, whether under the French legislation in force at the time or under international law. They had found themselves in a legal vacuum in which they had neither access to a lawyer nor information about exactly where they stood at the time. In support of the above argument, they rely on the reasons for the judgment of the Créteil tribunal de grande instance, ruling on their application for an order under the expedited procedure.

52. The Court notes that even though the applicants were not in France within the meaning of the Ordinance of 2 November 1945, holding them in the international zone of Paris-Orly Airport made them subject to French law.

Despite its name, the international zone does not have extraterritorial status. In its decision of 25 February 1992 the Constitutional Council did not challenge the legislature's right to lay down rules governing the holding of aliens in that zone. For example, the Law of 6 July 1992 (see paragraph 23 above) provides, inter alia, for the intervention of the ordinary courts to authorise holding for more than four days, the assistance of an interpreter and a doctor and the possibility of communicating with a lawyer. The Decree of 15 December 1992 (see paragraph 24 above) lays down the procedural rules applicable to proceedings brought in accordance with that Law. The Decree of 2 May 1995 (see paragraph 25 above) gives the delegate of the United Nations High Commissioner for Refugees or his representatives and humanitarian associations permanent access to the zone.

However, these rules - which postdate the facts of the case - were not applicable at the time to the applicants.

53. The Court emphasises that from 9 to 29 March 1992 the applicants were in the situation of asylum-seekers whose application had not yet been considered. In that connection, neither the Decree of 27 May 1982 nor the - unpublished - circular of 26 June 1990 (the only text at the material time which specifically dealt with the practice of holding aliens in the transit zone) constituted a "law" of sufficient "quality" within the meaning of the Court's case-law; there must be adequate legal protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded by the Convention (see the Malone v. the United Kingdom judgment of 2 August 1984, Series A no. 82, p. 32, para. 67). In any event,

the Decree of 27 May 1982 did not concern holding aliens in the international zone. The above-mentioned circular consisted, by its very nature, of instructions given by the Minister of the Interior to Prefects and Chief Constables concerning aliens refused leave to enter at the frontiers. It was intended to provide guidelines for immigration control at ports and airports. Moreover, the brief section it devoted to holding in the international zone and aliens' rights contains no guarantees comparable to those introduced by the Law of 6 July 1992. At the material time none of these texts allowed the ordinary courts to review the conditions under which aliens were held or, if necessary, to impose a limit on the administrative authorities as regards the length of time for which they were held. They did not provide for legal, humanitarian and social assistance, nor did they lay down procedures and time-limits for access to such assistance so that asylum-seekers like the applicants could take the necessary steps.

54. The French legal rules in force at the time, as applied in the present case, did not sufficiently guarantee the applicants' right to liberty.

There has accordingly been a breach of Article 5 para. 1 (art. 5-1).

III. APPLICATION OF ARTICLE 50 OF THE CONVENTION (art. 50)

55. Under Article 50 of the Convention (art. 50),

> "If the Court finds that a decision or a measure taken by a legalauthority or any other authority of a High Contracting Party iscompletely or partially in conflict with the obligations arisingfrom the ... Convention, and if the internal law of the saidParty allows only partial reparation to be made for theconsequences of this decision or measure, the decision of theCourt shall, if necessary, afford just satisfaction to theinjured party."

A. Damage

56. The applicants claimed to have suffered prejudice on account of their unlawful detention, which they assessed - on the basis of the French Court of Cassation's case-law on this subject - at 80,000 French francs (FRF), that is FRF 1,000 each per day of detention. In addition to that sum they claimed damage resulting from the fact that it was impossible for them to gain access to the procedure for obtaining refugee status and from loss of the opportunity to have that status recognised, justifying the award of a lump sum of FRF 120,000.

57. The Government argued that the applicants' claims should be dismissed.

58. According to the Delegate of the Commission, only the first request should be granted by the Court, if it saw fit. As regards the second request, since the right to reside in the territory of a Contracting State, and more particularly the right to obtain political asylum there, was not guaranteed by

the Convention, there could be no loss of opportunity. 59. Having regard to the particular circumstances of the case, the Court considers that the finding of a violation of Article 5 (art. 5) in itself constitutes sufficient just satisfaction.

B. Costs and expenses

60. In respect of the costs and expenses incurred in the proceedings in the Créteil tribunal de grande instance and then before the Convention institutions, the applicants claimed the sum of FRF 57,000, not including value-added tax (VAT).

61. The Government did not comment; the Delegate of the Commission left this question to the Court's discretion.

62. Having regard to its case-law on the question, and making its assessment on an equitable basis, the Court fixes the amount to be paid for costs and expenses, including VAT, at FRF 57,000, less the FRF 9,758 paid by the Council of Europe in legal aid.

C. Default interest

63. 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 6.65% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary objection;

2. Holds that Article 5 para. 1 of the Convention (art. 5-1) applies in the case and has been breached;

3. Holds that this judgment in itself constitutes sufficient just satisfaction for the alleged prejudice;

4. Holds that the respondent State is to pay to the applicants,within three months, 57,000 (fifty-seven thousand) French francs,including VAT, less 9,758 (nine thousand seven hundred andfifty-eight) French francs, for costs and expenses and that simple interest at an annual rate of 6.65% shall be payable from the expiry of the above-mentioned three months until settlement;

5. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 June 1996.

Rudolf BERNHARDT
President

Herbert PETZOLD
Registrar