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

COURT (CHAMBER)

CASE OF LETELLIER v. FRANCE

(Application no. 12369/86)

JUDGMENT

STRASBOURG

26 June 1991

In the Letellier case[·],

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 the Rules of Court[···], as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr Thór VILHJÁLMSSON,
Mr F. MATSCHER,
Mr L.-E. PETTITI,
Mr R. MACDONALD,
Mr R. BERNHARDT,
Mr A. SPIELMANN,
Mr . DE MEYER,
Mr S.K. MARTENS,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 26 January and 24 May 1991,

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 21 May 1990, within the three-month period laid down by Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12369/86) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mrs Monique Letellier, on 21 August 1986.

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 from the Court as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 5

[·] The case is numbered 29/1990/220/282. 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.

[··] As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

[···] The amendments to the Rules of Court which came into force on 1 April 1989 are applicable to this case.

§§ 3 and 4 (art. 5-3, art. 5-4) as regards the requirements of reasonable time and speediness.

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

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. Ryssdal, the President of the Court (Rule 21 § 3 (b)). On 24 May 1990, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr F. Matscher, Mr J. Pinheiro Farinha, Mr R. Bernhardt, Mr A. Spielmann, Mr J. De Meyer and Mr S.K. Martens (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43). Subsequently Mr R. Macdonald, substitute judge, replaced Mr Pinheiro Farinha, who was unable to take part in the further consideration of the case (Rules 22 § 1 and 24 § 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 § 5) and, through the Registrar, consulted the Agent of the French Government ("the Government"), the Delegate of the Commission and the applicant's representative on the need for a written procedure (Rule 37 § 1). In accordance with the order made in consequence, the Registrar received the applicant's claims under Article 50 (art. 50) of the Convention on 28 June 1990 and the Government's memorial on 19 October. By a letter of 9 November the Deputy Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 16 November 1990 that the oral proceedings should open on 23 January 1991 (Rule 38).

6. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government
  Mrs E. BELLIARD, Deputy Director of Legal Affairs,
  Ministry of Foreign Affairs, *Agent*,
  Mr B. GAIN, Assistant Director of Human Rights,
  Legal Affairs Directorate, Ministry of Foreign Affairs,
  Miss M. PICARD, magistrat, seconded to the Legal Affairs Directorate,
  Ministry of Foreign Affairs,
  Mrs M. INGALL-MONTAGNIER, magistrat,
  seconded to the Criminal Affairs and Pardons Directorate,
  Ministry of Justice, *Counsel*;
- for the Commission
  Mr A. WEITZEL, *Delegate*;
- for the applicant

Ms D. LABADIE, avocat, *Counsel*.

7. The Court heard addresses by Mrs Belliard for the Government, by Mr Weitzel for the Commission and by Ms Labadie for the applicant, as well as their answers to its questions. On the occasion of the hearing the representatives of the Government and of the applicant produced various documents.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

8. Mrs Monique Merdy, née Letellier, a French national residing at La Varenne Saint-Hilaire (Val-de-Marne), took over a bar-restaurant in March 1985. The mother of eight children from two marriages, she was separated from her second husband, Mr Merdy, a petrol pump attendant, and at the material time was living with a third man.

9. On 6 July 1985 Mr Merdy was killed by a shot fired from a car. A witness had taken down the registration number of the vehicle and on the same day the police detained Mr Gérard Moysan, who was found to be in possession of a pump-action shotgun. He admitted that he had fired the shot, but stated that he had acted on the applicant's instructions. He claimed that she had agreed to pay him, and one of his friends, Mr Michel Bredon - who also accused the applicant -, the sum of 40,000 French francs for killing her husband and that she had advanced him 2,000 francs for the purchase of the weapon.

Mrs Letellier denied these accusations although she admitted having seen the murder weapon, having declared in public that she wished to get rid of her husband and having given her agreement "without thinking too much about it" to Mr Moysan who had proposed to carry out the deed. She maintained, moreover, that she had given 2,000 francs to Mr Moysan, whom she described as "a poor kid", so that he could buy a motor car.

10. On 8 July 1985, in the course of the first examination, the investigating judge of the tribunal de grande instance (Regional Court) of Créteil charged the applicant with being an accessory to murder and remanded her in custody.

A. The investigation proceedings

1. The first application for release of 20 December 1985

11. On 20 December 1985 the applicant sought her release arguing that there was no serious evidence of her guilt. She claimed in addition that she possessed all the necessary guarantees that she would appear for trial: her home, the business, which she ran single-handed, and her eight children, some of whom were still dependent on her.

12. On 24 December 1985 the investigating judge ordered her release subject to court supervision; she gave the following grounds for her decision:

> "... at this stage of the proceedings detention is no longer necessary for the process of establishing the truth; ... although the accused provides guarantees that she will appear for trial which are sufficient to warrant her release, court supervision would seem appropriate."

He ordered the applicant not to go outside certain territorial limits without prior authorisation, to report to him once a week on a fixed day and at a fixed time, to appear before him when summoned, to comply with restrictions concerning her business activities and to refrain from receiving visits from or meeting four named persons and from entering into contact with them in any way whatsoever.

Thereupon the guardianship judge (juge des tutelles) returned custody of her four minor children to Mrs Letellier.

13. On appeal by the Créteil public prosecutor, the indictments division (chambre d'accusation) of the Paris Court of Appeal set aside the order on 22 January 1986, declaring that it would thereafter exercise sole jurisdiction on questions concerning the detention. It noted in particular as follows:

> "...
>
> The file contains ... considerable evidence suggesting that the accused was an accessory to murder, which is an exceptionally serious criminal offence having caused a major disturbance to public order, the gravity of which cannot diminish in the short lapse of time of six months.
>
> The investigations are continuing and it is necessary to prevent any manoeuvre capable of impeding the establishment of the truth.
>
> In addition, in view of the severity of the sentence to which she is liable at law, there are grounds for fearing that she may seek to evade the prosecution brought against her.
>
> No measure of court supervision would be effective in these various respects.
>
> Ultimately detention on remand remains the sole means of preventing pressure being brought to bear on the witnesses.

It is necessary in order to protect public order from the disturbance caused by the offence and to ensure that the accused remains at the disposal of the judicial authorities.

... ."

As a result, the applicant, who had been released on 24 December 1985, returned to prison on 22 January 1986.

14. At the hearing on 16 January 1986 Mrs Letellier had filed a defence memorial. In it she stressed that she had waited until the main phase of the investigation had been concluded before lodging her application for release; thus all the witnesses had been heard by the police or by the investigating judge, two series of confrontations with Mr Moysan had taken place and all the commissions rogatoires had been executed. She noted in addition that Article 144 et seq. of the Code of Criminal Procedure in no way regarded the gravity of the alleged offences as one of the conditions for placing and keeping an accused in pre-trial detention and that the parties seeking damages (parties civiles) had not filed any observations on learning of her release. She urged the indictments division to confirm the order of 24 December 1985 releasing her subject to court supervision and stated that she had no intention whatsoever of evading the prosecution, that she would comply scrupulously with the court supervision, that she could provide firm guarantees that she would appear in court and that further imprisonment would destroy, both financially and emotionally, a whole family, whose sole head she remained.

15. Mrs Letellier filed an appeal which the Criminal Division of the Court of Cassation dismissed on 21 April 1986 on the following grounds:

"...

In setting aside the order for the release subject to court supervision of Monique Merdy, née Letellier, accused of being an accessory to the murder of her husband, the indictments division, after having set out the facts and noted the existence of divergences between her statements and the various testimonies obtained, observed that the offence had caused a disturbance to public order which had not yet diminished, that, as the investigation was continuing, it was important to prevent any manoeuvre likely to impede the establishment of the truth and bring pressure to bear on the witnesses, and that the severity of the sentence to which the accused was liable at law raised doubts as to whether she would appear for trial if she were released; the indictments division considered that no measure of court supervision could be effective in these various respects;

That being so the Court of Cassation is able to satisfy itself that the indictments division ordered the continued detention of Monique Merdy, née Letellier, by a decision stating specific grounds with reference to the particular circumstances and for cases provided for in Articles 144 and 145 of the Code of Criminal Procedure;

... ."

2. The second application for release of 24 January 1986

16. On 24 January 1986 the applicant again requested her release; the indictments division of the Paris Court of Appeal dismissed her application by a decision of 12 February 1986, similar to its earlier decision (see paragraph 13 above).

17. On an appeal by Mrs Letellier, the Court of Cassation set aside this decision on 13 May 1986 on the ground that the rights of the defence had been infringed as neither the applicant nor her counsel had been notified of the date of the hearing fixed for the examination of the application. It remitted the case to the indictments division of the Paris Court of Appeal, composed differently.

18. The latter indictments division dismissed the application on 17 September 1986. It considered that there were "in the light of the evidence ..., serious grounds for suspecting that the accused had been an accessory to murder". It took the view that "under these circumstances ..., the accused's detention [was] necessary, having regard to the seriousness of the offence ... and the length of the sentence [which she risked], in order to ensure that she remain[ed] at the disposal of the judicial authorities and to maintain public order".

It also dismissed the complaints based on a violation of Article 5 §§ 3 and 4 (art. 5-3, art. 5-4) of the Convention, stressing that these complaints were not based on any provision of the Code of Criminal Procedure and that it had taken its decision with due dispatch in accordance with that code.

19. At the hearing on 16 September 1986, Mrs Letellier had submitted a defence memorial. In it she requested the indictments division to order her release "because her application for release had not been heard within a reasonable time" within the meaning of Article 5 § 3 (art. 5-3) of the Convention and to take formal note that she did not object to being placed under court supervision.

20. On an appeal by Mrs Letellier, the Court of Cassation overturned this decision on 23 December 1986. It found that the Court of Appeal had not answered the submissions concerning the failure to respect the "reasonable time" referred to in Article 5 § 3 (art. 5-3).

21. On 17 March 1987 the indictments division of the Amiens Court of Appeal dismissed the application, which had been remitted to it, on the following grounds:

> "...
>
> ... the charges are indeed based on sufficient, relevant and objective evidence despite the accused's claim to the contrary;
>
> Having regard to the complexity of the case and to the investigative measures which it necessitates, the time taken to conduct the investigation remains reasonable for the purposes of the European Convention, with reference to the dates on which Mrs

Letellier was placed in detention and had her detention extended; the proceedings have never been neglected, as examination of the file shows;

Mrs Letellier's complaint that a reasonable time has been exceeded is also directed against the time taken to hear her application for release ... and she infers therefrom, by analogy with Articles 194 and 574-1 of the French Code of Criminal Procedure, that such a decision should have been taken within a period of between thirty days and three months;

However, none of the provisions of that code which are expressly applicable to the present dispute has been infringed and it must be recognised that the period of time which elapsed between the date of the application and that of the present judgment is only the inevitable result of the various appeals filed;

Finally the applicant's continued detention on remand remains necessary to preserve public order from the disturbance caused by such a - according to the present state of the investigation - decisive act of incitement to the murder of Mr Merdy; the extent of such disturbance, to the whole community, is not determined only on the basis of the reactions of the victim's entourage, contrary to what the defence claims ... . "

22. The applicant filed an appeal on points of law. She relied inter alia on Article 5 § 3 (art. 5-3) of the Convention, claiming that the indictments division had "failed to consider whether detention lasting more than twenty-two months, when the investigation [was] not yet concluded, exceeded a reasonable time". She also alleged violation of Article 5 § 4 (art. 5-4) inasmuch as the eighty-three days which had elapsed between the judgment of the Court of Cassation on 23 December 1986 and the judgment of the court to which the application was remitted could not be regarded as satisfying the requirement of speediness.

The Court of Cassation dismissed the appeal on 15 June 1987 on the following grounds:

"...

In order to reply to the accused's submissions based on the provisions of Article 5 § 3 (art. 5-3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which she had claimed had been infringed, the court to which the application was remitted found that, in relation to the dates on which Monique Letellier had been placed in detention on remand and had her detention extended, having regard to the complexity of the case and the necessary investigative measures, the proceedings had been conducted within a reasonable time within the meaning of the above-mentioned Convention; it found that the time which had elapsed between the date of her application for release of 24 January 1986 and that of the present judgment was only the inevitable result of the various appeals filed, cited in the judgment;

Moreover, in dismissing this application for release and ordering the accused's continued detention on remand, the indictments division, after having referred to the grounds for suspicion against Monique Letellier, noted that the latter denied having been an accessory in any way although the declarations in turn of the two main witnesses conflict with the accused's version. According to the indictments division, it

remains necessary to keep the accused in detention on remand in order to protect public order from the disturbance to which incitement to the murder of a husband gives rise;

In the light of the foregoing statements, the Court of Cassation is able to satisfy itself that the indictments division, before which no submissions based on the provisions of Article 5 § 4 (art. 5-4) of the European Convention were raised and which was not bound by the requirements of Article 145-1, sub-paragraph 3, of the Code of Criminal Procedure, which do not apply in proceedings concerning more serious criminal offences (matière criminelle), did, without infringing the provisions referred to in the defence submissions, give its ruling stating specific grounds with reference to the particular circumstances of the case, under the conditions and for the cases exhaustively listed in Articles 144 and 145 of the Code of Criminal Procedure;

... ."

3. The other applications for release

23. During the investigation, the applicant submitted six other applications for release: on 14 February, 21 March, 19 November and 15 December 1986 and then on 31 March and 5 August 1987. The indictments division of the Paris Court of Appeal dismissed them on 5 March, 10 April, 5 December and 23 December 1986 and on 10 April and 24 August 1987 respectively. It based its decisions on the following grounds:

Judgment of 5 March 1986

"...

The file thus contains considerable evidence suggesting that the accused was an accessory to murder, which is an exceptionally serious criminal offence having caused a major disturbance to public order, the gravity of which cannot diminish in the short lapse of time of seven months.

The investigations are continuing and it is necessary to prevent any manoeuvre capable of impeding the establishment of the truth.

In addition, in view of the severity of the sentence to which she is liable at law, there are grounds for fearing that she may seek to evade the prosecution brought against her.

No measure of court supervision would be effective in these various respects.

Ultimately, detention on remand remains the sole means of preventing pressure being brought to bear on the witnesses.

It is necessary to protect public order from the disturbance caused by the offence and to ensure that the accused remains at the disposal of the judicial authorities.

... ."

Judgments of 10 April and 5 December 1986

Identical to the preceding decision - itself very similar to that of 22 January 1986 (see paragraph 13 above) - except that the sixth paragraph was not included and that the first paragraph ended at the word "accessory".

Judgment of 23 December 1986

"...

In these circumstances there are strong indications of Mrs Merdy's guilt, indications which were moreover noted most recently by a judgment of this indictments division dated 5 December 1986.

The acts which Mrs Merdy is alleged to have carried out seriously disturbed public order and this disturbance persists. In addition there is a risk that, if she were to be freed, she would, in view of the severity of the sentence to which she is liable, seek to evade the criminal proceedings brought against her.

The constraints of court supervision would be inadequate in this instance.

The detention on remand of Mrs Merdy is necessary to preserve public order from the disturbance caused by the offence and to ensure that she remains at the disposal of the judicial authorities.

... ."

Judgment of 10 April 1987

"...

There are strong indications of Monique Letellier's guilt, having regard to the consistency of Mr Moysan's statements.

No new item of evidence has as yet been brought to the court's attention such as would be capable of altering the situation as regards Monique Letellier's incarceration.

The continuation of her detention on remand remains necessary to preserve public order from the serious disturbance caused by the offence and to ensure that she will appear for trial.

The constraints of court supervision would clearly be inadequate to attain these objectives.

... ."

Judgment of 24 August 1987

"...

In the present state of the proceedings, Monique Letellier is the subject of an order for the forwarding of documents to the principal public prosecutor dated 8 July 1987 made by the Créteil investigating judge, which gives grounds for supposing that the investigation is close to conclusion so that the competent court will be able to give judgment within a reasonable time.

In consequence the detention on remand is absolutely necessary on account of the particularly serious disturbance caused by the offence.

It is to be feared that Mrs Letellier will seek to evade trial, having regard to the severity of the sentence which she risks.

It is consequently essential that the accused remains in detention in order to ensure that she is at the disposal of the trial court.

The guarantees of court supervision would clearly be inadequate to attain these objectives.

... ."

24. In the defence memorials which she submitted at the hearings on 23 December 1986, 3 March 1987 and 10 April 1987, Mrs Letellier stressed the contradictions in the investigation and the statements of the witnesses. Moreover, she contested the arguments put forward to justify the extension of her detention. She maintained that, once released, she would remain at the disposal of the judicial authorities and that public order would in no way be threatened; she would comply scrupulously with any court supervision; she would provide very firm guarantees for her appearance in court and her continued detention would destroy emotionally and financially a whole family, whose sole head she remained. She claimed the benefit of the presumption of innocence, a fundamental and inviolable principle of French law.

In her memorial of 3 March 1987, the applicant also invoked Article 5 § 3 (art. 5-3) of the Convention. She noted that "... in accordance with the case-law of the European Court of Human Rights, the grounds given in the decision(s) concerning the application(s) for release, on the one hand, taken together with the true facts indicated by [her] in her applications, on the other, [made] it possible [for her] to affirm that those grounds contained both in the judgment ... of 12 February 1986 and in the preceding judgment of 22 January 1986 and in the subsequent judgments [were] neither relevant nor sufficient". She added that the parties seeking damages, the victim's mother and sister, had not formulated any observations when she had filed her applications for release of December 1985, January, February, March, November and December 1986, whereas they had energetically opposed those of Mr Moysan; she reiterated this last argument in her memorial of 10 April 1987.

25. The case followed its course. On 26 May 1987 the investigating judge made an order terminating the investigation and transmitting the papers to the public prosecutor's office. On 1 July the Créteil public prosecutor lodged his final submissions calling for the file to be transmitted to the principal public prosecutor's office of the Court of Appeal. This was ordered by the investigating judge on 8 July.

B. The trial proceedings

26. On 26 August 1987 the indictments division committed the applicant for trial on a charge of

> "having, in the course of 1985 in Val-de-Marne, being less than ten years ago, been an accessory to the premeditated murder of Bernard Merdy committed on 6 July 1985 by Gérard Moysan, inasmuch as she had by gifts, promises, threats, misuse of authority or power, incited the commission of this deed or given instructions for its commission".

27. On 9 September 1987 the Créteil public prosecutor's office advised Mrs Letellier's counsel that "the case [was] liable to be heard during the first quarter of 1988". By a letter of 21 October 1987, however, the lawyer in question gave notice that he would be unavailable from 1 February to 15 March 1988 on account of his participation in another trial before the Assize Court of the Vienne département.

28. On 23 March 1988 the public prosecutor informed the accused's lawyer that the case would be heard on 9 and 10 May 1988. On 10 May 1988 the Val-de-Marne Assize Court sentenced Mrs Letellier to three years' imprisonment for being an accessory to murder. It sentenced Mr Moysan to fifteen years' imprisonment for murder and acquitted Mr Bredon.

The applicant did not file an appeal on points of law; she was released on 17 May 1988, the pre-trial detention being automatically deducted from the sentence (Article 24 of the Criminal Code).

II. THE RELEVANT LEGISLATION

29. The provisions of the Code of Criminal Procedure concerning detention on remand, as applicable at the material time, are as follows:

Article 144

> "In cases involving less serious criminal offences (matière correctionnelle), if the sentence risked is equal to or exceeds one year's imprisonment in cases of flagrante delicto, or two years' imprisonment in other cases, and if the constraints of court supervision are inadequate in regard to the functions set out in Article 137, the detention on remand may be ordered or continued:
>
> 1° where the detention on remand of the accused is the sole means of preserving evidence or material clues or of preventing either pressure being brought to bear on the witnesses or the victims, or collusion between the accused and accomplices;
>
> 2° where this detention is necessary to preserve public order from the disturbance caused by the offence or to protect the accused, to put an end to the offence or to prevent its repetition or to ensure that the accused remains at the disposal of the judicial authorities.
>
> ... ."

(An Act of 6 July 1989 expressly provided that Article 144 was to be applicable to more serious criminal cases (matière criminelle).)

Article 145

"In cases involving less serious criminal offences, an accused shall be placed in detention on remand by virtue of an order which may be made at any stage of the investigation and which must give specific reasons with reference to the particular circumstances of the case in relation to the provisions of Article 144; this order shall be notified orally to the accused who shall receive a full copy of it; receipt thereof shall be acknowleged by the accused's signature in the file of the proceedings.

As regards more serious criminal offences, detention is prescribed by warrant, without a prior order.

...

The investigating judge shall give his decision in chambers, after an adversarial hearing in the course of which he shall hear the submissions of the public prosecutor, then the observations of the accused and, if appropriate, of his counsel.

... ."

Article 148

"Whatever the classification of the offence, the accused or his lawyer may lodge at any time with the investigating judge an application for release, subject to the obligations laid down in the preceding Article [namely: the undertaking of the person concerned "to appear whenever his presence is required at the different stages of the procedure and to keep the investigating judge informed as to all his movements"].

The investigating judge shall communicate the file immediately to the public prosecutor for his submissions. He shall at the same time, by whatever means, inform the party seeking damages who may submit observations. ...

The investigating judge shall rule, by an order giving specific grounds under the conditions laid down in Article 145-1, not later than five days following the communication to the public prosecutor.

...

Where an order is made releasing the accused, it may be accompanied by an order placing him under court supervision.

... ."

Article 194

"...

[The indictments division] shall, when dealing with the question of detention, give its decision as speedily as possible and not later than thirty days [fifteen since 1 October 1988] after the appeal provided for in Article 186, failing which the accused shall automatically be released, except where verifications concerning his application have been ordered or where unforeseeable and insurmountable circumstances prevent the matter from being decided within the time-limit laid down in the present Article."

Article 567-2

"The criminal division hearing an appeal on a point of law against a judgment of the indictments division concerning detention on remand shall rule within three months of the file's reception at the Court of Cassation, failing which the accused shall automatically be released.

The appellant or his lawyer shall, on pain of having his application dismissed, file his memorial setting out the appeal submissions within one month of the file's reception, save where exceptionally the president of the criminal division has decided to extend the time-limit for a period of eight days. After the expiry of this time-limit, no new submission may be raised by him and memorials may no longer be filed.

... ."

PROCEEDINGS BEFORE THE COMMISSION

30. In her application of 21 August 1986 to the Commission (no.12369/86) Mrs Letellier complained that her detention on remand had exceeded the "reasonable time" provided for in Article 5 § 3 (art. 5-3) of the Convention. She alleged furthermore that the various courts which had in turn examined her application for release of 24 January 1986 had not ruled "speedily" as is required under Article 5 § 4 (art. 5-4).

31. The Commission declared the application admissible on 13 March 1989. In its report of 15 March 1990 (Article 31) (art. 31), it expressed the opinion that there had been a violation of paragraph 3 (unanimously) and paragraph 4 (seventeen votes to one) of Article 5 (art. 5-3, art. 5-4). The full text of the Commission's opinion and the dissenting opinion accompanying the report is reproduced as an annex to this judgment·.

· Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 207 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

32. At the hearing the Government confirmed the submission put forward in their memorial, in which they asked the Court to "hold that there [had] not been in this instance a violation of Article 5 §§ 3 and 4 (art. 5-3, art. 5-4) of the Convention".

AS TO THE LAW

I.ALLEGED VIOLATION OF ARTICLE 5 § 3 (art. 5-3)

33. The applicant claimed that the length of her detention on remand had violated Article 5 § 3 (art. 5-3), which is worded as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article (art. 5-1-c), ... shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

The Government contested this view. The Commission considered that after 22 January 1986 (see paragraph 13 above) the grounds for Mrs Letellier's detention had no longer been reasonable.

A. Period to be taken into consideration

34. The period to be taken into consideration began on 8 July 1985, the date on which the applicant was remanded in custody, and ended on 10 May 1988, with the judgment of the Assize Court, less the period, from 24 December 1985 to 22 January 1986, during which she was released subject to court supervision (see paragraph 12 above). It therefore lasted two years and nine months.

B. Reasonableness of the length of detention

35. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts

mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (art. 5-3) of the Convention (see, inter alia, the Neumeister judgment of 27 June 1968, Series A no. 8, p. 37, §§ 4-5).

The persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the validity of the continued detention (see the Stögmüller judgment of 10 November 1969, Series A no. 9, p. 40, § 4), but, after a certain lapse of time, it no longer suffices; the Court must then establish whether the other grounds cited by the judicial authorities continue to justify the deprivation of liberty (ibid., and see the Wemhoff judgment of 27 June 1968, Series A no. 7, pp. 24-25, § 12, and the Ringeisen judgment of 16 July 1971, Series A no. 13, p. 42, § 104). Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see the Matznetter judgment of 10 November 1969, Series A no. 10, p. 34, § 12, and the B. v. Austria judgment of 28 March 1990, Series A no. 175, p. 16, § 42).

36. In order to justify their refusal to release Mrs Letellier, the indictments divisions of the Paris and Amiens Courts of Appeal stressed in particular that it was necessary to prevent her from bringing pressure to bear on the witnesses, that there was a risk of her absconding which had to be countered, that court supervision was not sufficient to achieve these objectives and that her release would gravely disturb public order.

1. The risk of pressure being brought to bear on the witnesses

37. The Government pointed out that the charges against Mrs Letellier were based essentially on the statements of Mr Moysan and Mr Bredon (see paragraph 9 above). The latter, who was examined by the investigating judge on 25 November 1985, could not, on account of his failure to appear, be confronted with the accused on 17 December 1985. The need to avoid pressure being brought to bear such as was liable to lead to changes in the statements of witnesses at confrontations which were envisaged was one of the grounds given in the decision of 22 January 1986 of the Paris indictments division (see paragraph 13 above).

38. According to the Commission, although such a fear was conceivable at the beginning of the investigation, it was no longer decisive after the numerous examinations of witnesses. Moreover, nothing showed that the applicant had engaged in intimidatory actions during her release subject to court supervision (see paragraphs 12-13 above).

39. The Court accepts that a genuine risk of pressure being brought to bear on the witnesses may have existed initially, but takes the view that it diminished and indeed disappeared with the passing of time. In fact, after 5 December 1986 the courts no longer referred to such a risk: only the decisions of the Paris indictments division of 22 January, 5 March, 10 April

and 5 December 1986 (see paragraphs 13 and 23 above) regarded detention on remand as the sole means of countering it.

After 23 December 1986 in any event (see paragraph 23 above), the continued detention was therefore no longer justified under this head.

2. The danger of absconding

40. The various decisions of the Paris indictments division (see paragraphs 13, 16, 18 and 23 above) were based on the fear of the applicant's evading trial because of "the severity of the sentence to which she was liable at law" and on the need to ensure that she remained at the disposal of the judicial authorities.

41. The Commission observed that during the four weeks for which she had been released - from 24 December 1985 to 22 January 1986 - the applicant had complied with the obligations of court supervision and had not sought to abscond. To do so would, moreover, have been difficult for her, as the mother of minor children and the manager of a business representing her sole source of income. As the danger of absconding had not been apparent from the outset, the decisions given had contained inadequate statements of reasons in so far as they had mentioned no circumstance capable of establishing it.

42. The Government considered that there was indeed a danger of the accused's absconding. They referred to the severity of the sentence which Mrs Letellier risked and the evidence against her. They also put forward additional considerations which were not however invoked in the judicial decisions in question.

43. The Court points out that such a danger cannot be gauged solely on the basis of the severity of the sentence risked. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see, mutatis mutandis, the Neumeister judgment cited above, Series A no. 8, p. 39, § 10). In this case the decisions of the indictments divisions do not give the reasons why, notwithstanding the arguments put forward by the applicant in support of her applications for release, they considered the risk of her absconding to be decisive (see paragraphs 14, 19 and 24 above).

3. The inadequacy of court supervision

44. According to the applicant, court supervision would have made it possible to attain the objectives pursued. Furthermore, she had been under such supervision without any problems arising for nearly one month, from 24 December 1985 to 22 January 1986 (see paragraphs 12-13 above), and had declared her readiness to accept it on each occasion that she sought her release (see paragraphs 14, 19 and 24 above).

45. The Government considered on the other hand that court supervision would not have been sufficient to avert the consequences and risks of the alleged offence.

46. When the only remaining reason for continued detention is the fear that the accused will abscond and thereby subsequently avoid appearing for trial, he must be released if he is in a position to provide adequate guarantees to ensure that he will so appear, for example by lodging a security (see the Wemhoff judgment, cited above, Series A no. 7, p. 25, § 15).

The Court notes, in agreement with the Commission, that the indictments divisions did not establish that this was not the case in this instance.

4. The preservation of public order

47. The decisions of the Paris indictments division of 22 January, 5 March and 23 December 1986 and of 10 April and 24 August 1987 (see paragraphs 13 and 23 above), like that of the Amiens indictments division of 17 March 1987 (see paragraph 21 above), emphasized the need to protect public order from the disturbance caused by Mr Merdy's murder.

48. The applicant argued that disturbance to public order could not result from the mere commission of an offence.

49. According to the Commission, the danger of such a disturbance, which it understood to mean disturbance of public opinion, following the release of a suspect, cannot derive solely from the gravity of a crime or the charges pending against the person concerned. In order to determine whether there was a danger of this nature, it was in its view necessary to take account of other factors, such as the possible attitude and conduct of the accused once released; the French courts had not done this in the present case.

50. For the Government, on the other hand, the disturbance to public order is generated by the offence itself and the circumstances in which it has been perpetrated. Representing an irreparable attack on the person of a human being, any murder greatly disturbs the public order of a society concerned to guarantee human rights, of which respect for human life represents an essential value, as is shown by Article 2 (art. 2) of the Convention. The resulting disturbance is even more profound and lasting in the case of premeditated and organised murder. There were grave and corroborating indications to suggest that Mrs Letellier had conceived the scheme of murdering her husband and instructed third parties to carry it out in return for payment.

51. The Court accepts that, by reason of their particular gravity and public reaction to them, certain offences may give rise to a social disturbance capable of justifying pre-trial detention, at least for a time. In exceptional circumstances this factor may therefore be taken into account for the purposes of the Convention, in any event in so far as domestic law

recognises - as in Article 144 of the Code of Criminal Procedure - the notion of disturbance to public order caused by an offence.

However, this ground can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the accused's release would actually disturb public order. In addition detention will continue to be legitimate only if public order remains actually threatened; its continuation cannot be used to anticipate a custodial sentence.

In this case, these conditions were not satisfied. The indictments divisions assessed the need to continue the deprivation of liberty from a purely abstract point of view, taking into consideration only the gravity of the offence. This was despite the fact that the applicant had stressed in her memorials of 16 January 1986 and of 3 March and 10 April 1987 that the mother and sister of the victim had not submitted any observations when she filed her applications for release, whereas they had energetically contested those filed by Mr Moysan (see paragraphs 14 and 24 in fine above); the French courts did not dispute this.

5. Conclusion

52. The Court therefore arrives at the conclusion that, at least from 23 December 1986 (see paragraph 39 above), the contested detention ceased to be based on relevant and sufficient grounds.

The decision of 24 December 1985 to release the accused was taken by the judicial officer in the best position to know the evidence and to assess the circumstances and personality of Mrs Letellier; accordingly the indictments divisions ought in their subsequent judgments to have stated in a more clear and specific, not to say less stereotyped, manner why they considered it necessary to continue the pre-trial detention.

53. There has consequently been a violation of Article 5 § 3 (art. 5-3).

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 (art. 5-4)

54. The applicant also alleged a breach of the requirements of Article 5 § 4 (art. 5-4), according to which:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

She claimed that the final decision concerning her application for release of 24 January 1986, namely the Court of Cassation's dismissal on 15 June 1987 of her appeal against the decision of the indictments division of the Amiens Court of Appeal of 17 March 1987 (see paragraphs 16, 21 and 22 above), was not given "speedily". The Commission agreed.

55. The Government contested this view. They argued that the length of the lapse of time in question was to be explained by the large number of

appeals filed by Mrs Letellier herself on procedural issues: in thirteen months and three weeks the indictments divisions gave three decisions and the Court of Cassation two; the time which it took for these decisions to be delivered was in no way excessive and could not be criticised because it was in fact the result of the systematic use of remedies available under French law.

56. The Court has certain doubts about the overall length of the examination of the second application for release, in particular before the indictments divisions called upon to rule after a previous decision had been quashed in the Court of Cassation; it should however be borne in mind that the applicant retained the right to submit a further application at any time. Indeed from 14 February 1986 to 5 August 1987 she lodged six other applications, which were all dealt with in periods of from eight to twenty days (see paragraph 23 above).

57. There has therefore been no violation of Article 5 § 4 (art. 5-4).

III. APPLICATION OF ARTICLE 50 (art. 50)

58. According to Article 50 (art. 50),

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

Under this provision, the applicant claimed compensation for damage and the reimbursement of costs.

A. Damage

59. Mrs Letellier sought in the first place 10,000 francs in respect of non-pecuniary damage and 435,000 francs for pecuniary damage; the latter amount was said to represent half the turnover which her bar-restaurant could have achieved between her arrest and the verdict of the assize court.

60. The Government did not perceive any causal connection between the alleged breaches and the pecuniary damage resulting for the applicant from her deprivation of liberty, which she would in any case have had to undergo once convicted. Furthermore, they considered that the finding of a violation would constitute sufficient reparation for the non-pecuniary damage.

61. The Delegate of the Commission expressed the view that she should be awarded compensation for non-pecuniary damage and, if appropriate, pecuniary damage, but did not put forward any figure.

62. The Court dismisses the application for pecuniary damage, because the pre-trial detention was deducted in its entirety from the sentence. As to

non-pecuniary damage, the Court considers that the present judgment constitutes sufficient reparation.

B. Costs and expenses

63. For the costs and expenses referable to the proceedings before the Convention institutions, Mrs Letellier claimed 21,433 francs.

64. The Government did not express an opinion on this issue. The Delegate of the Commission left the quantum to be determined by the Court.

65. The amount claimed corresponds to the criteria laid down by the Court in its case-law and it accordingly considers it equitable to allow the applicant's claims under this head in their entirety.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 5 § 3 (art. 5-3);

2. Holds that there has been no violation of Article 5 § 4 (art. 5-4);

3. Holds that the respondent State is to pay to the applicant, in respect of costs and expenses, 21,433 (twenty-one thousand four hundred and thirty-three) French francs;

4. 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 26 June 1991.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar