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

FIRST SECTION

CASE OF PAPON v. FRANCE

(Application no. 54210/00)

JUDGMENT

STRASBOURG

25 July 2002

FINAL

25/10/2002

In the case of Papon v. France,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr J.-P. COSTA,
Mr G. BONELLO,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr A. KOVLER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 4 July 2002,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 54210/00) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a French national, Mr Maurice Papon (“the applicant”), on 14 January 2000.

2. The applicant was represented before the Court by Mr L. Argand, of the Geneva Bar, and Mr J.-M. Varaut, of the Paris Bar. The French Government (“the Government”) were represented by Mrs M. Dubrocard, Head of the Human Rights Section, Ministry of Foreign Affairs, acting as Agent.

3. The applicant raised various complaints based on the length of the criminal proceedings against him, their unfairness, non-compliance with the principles of presumption of innocence and non-retrospective effect of criminal law. He also relied on the lack of access to the Court of Cassation on account of his having forfeited his right to appeal on points of law and the lack of any ordinary appeal.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section the Chamber that would consider the case (Rule 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

6. By a decision of 15 November 2001 [*Note by the Registry*. Extracts of the decision are reported in ECHR 2001-XII], the Court declared admissible the applicant's complaints concerning the lack of access to the Court of

Cassation on account of his having forfeited his right to appeal on points of law and the lack of any ordinary appeal. It declared inadmissible the other nine complaints which formed the remainder of the application.

7. Both the applicant and the Government filed written observations on the merits of the case (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, who was born in 1910, is currently in custody in the Santé Prison in Paris.

9. From May 1942 to August 1944 the applicant was the secretary-general of the Gironde prefecture under the authority of the prefect, Maurice Sabatier.

10. After the Liberation, according to figures provided by the applicant, more than 30,000 civil servants who had served under the Occupation were punished and several thousand people were executed, both officially and unofficially.

11. In an opinion dated 6 December 1944 the Ministry of the Interior's Committee for the Purge of Collaborators (*comité d'épuration*) proposed that the applicant should retain his post, taking the view that although he had held office under the Vichy regime, he had shown a favourable attitude towards the Resistance. He was therefore allowed to continue serving as head of the private office of Gaston Cusin, the Bordeaux Commissioner of the Republic.

12. He was appointed to the rank of prefect and posted to Corsica in 1947, then served as Paris Police Commissioner from 1958 to 1966. He was a member of Parliament from 1968 to 1978 and mayor of Saint-Amand-Montrond from 1971 to 1988. He served as chairman of the Finance Committee of the National Assembly from 1972 to 1973 and then as the general rapporteur on the budget until 1978. From 1978 to 1981 he was Minister for the Budget.

13. On 6 May 1981, between the two rounds of the presidential election, the weekly newspaper *Le Canard Enchaîné* published the first of a series of articles in which the applicant, who was Minister for the Budget at the time, was criticised for his behaviour during the Second World War.

14. The applicant asked the Action Committee of the Resistance to appoint a court of honour to assess his conduct under the German occupation. On 15 December 1981, having examined his immediate hierarchical superior, Maurice Sabatier, who said that he assumed "full

responsibility for the anti-Jewish repression for which his prefecture was responsible", the court of honour delivered a verdict in which it formally acknowledged that the applicant had been a member of the Resistance from January 1943 onwards but concluded "that in the very name of the principles which he believed he was defending, and not having been instructed to remain in his post by a competent authority of the Resistance, he should have resigned from his post as secretary-general of Gironde in July 1942".

15. On 8 December 1981 a lawyer named Boulanger lodged a criminal complaint against the applicant together with a civil-party application for crimes against humanity, aiding and abetting murder and abuse of official authority in connection with the deportation of eight persons arrested by the French police in Bordeaux and held in Bordeaux and then in Drancy Camp before being deported to Auschwitz and exterminated there. Six other criminal complaints together with civil-party applications relating to seventeen other victims of deportations were lodged in March and April 1982 by another lawyer, Mr Serge Klarsfeld, who is also the chairman of the association "Sons and daughters of France's Jewish deportees". On 29 July 1982 the Bordeaux public prosecutor's office asked for investigations to be opened in respect of all seven complaints.

A. The investigation proceedings

16. On 19 January 1983 the applicant was charged with crimes against humanity by the chief investigating judge at the Bordeaux *tribunal de grande instance*.

17. On 22 February 1984 the investigating judge commissioned an expert historical report from three historians. The report was filed on 11 January 1985.

18. In the meantime, on 23 May 1983, the investigating judge had begun examining witnesses, including Maurice Sabatier, the prefect of Gironde at the material time. However, former Article 681 of the Code of Criminal Procedure [Repealed by the Law of 4 January 1993] provided that where a civil servant or a mayor was likely to be charged with a serious crime (*crime*) or lesser serious offence (*délit*) committed in the performance of his duties, the public prosecutor had first to apply to the Criminal Division of the Court of Cassation to designate the court to carry out the investigation.

19. Since, by Article 171 of the Code of Criminal Procedure, failure to comply with that formal requirement rendered proceedings absolutely null and void, the Court of Cassation in a judgment of 11 February 1987 declared all the steps of the prosecution and investigation carried out after 5 January 1983, including the charging of the applicant, null and void as having been taken by a judge without jurisdiction and designated the

Indictment Division of the Bordeaux Court of Appeal to proceed with the investigation.

20. In a judgment of 4 August 1987 the Indictment Division ordered the joinder of the seven sets of proceedings instituted as a result of the complaints lodged before 5 January 1983 and ordered that the investigation be continued, appointing a judge of the Indictment Division to conduct it. In judgments of 9 November and 8 December 1987 the Indictment Division noted that three fresh criminal complaints had been lodged by associations together with applications to join the pending proceedings as an intervening civil party and ordered that these be added to the file. A complaint by two civil parties in March 1982 gave rise to another judgment designating the competent court delivered by the Criminal Division of the Court of Cassation on 9 December 1987 and a judgment of 28 June 1988 in which the Indictment Division ordered the joinder of those proceedings and confirmed the appointment of the judge to conduct the investigation. On 2 February 1988 the Indictment Division noted that a new complaint had been lodged on 24 July 1987 together with an application to join the pending proceedings as an intervening civil party and ordered that it be added to the file.

21. In a judgment of 5 January 1988 the Indictment Division dismissed an application by the prosecution for an expert historical report.

22. On 8 July and 20 October 1988 respectively the applicant and Maurice Sabatier were charged with crimes against humanity. Maurice Sabatier died on 19 April 1989 and the Indictment Division accordingly recorded on 6 February 1990 that the proceedings against him had lapsed.

23. In February, June, October and December 1988, more associations intervened in the proceedings by means of criminal complaints lodged together with civil-party applications, which were recorded in judgments of the Indictment Division in February, March, June and November 1988 and January 1989.

24. Another complaint together with a civil-party application was lodged on 18 November 1988 and 3 February 1989 by the association "Sons and daughters of France's Jewish deportees". It was lodged not only against the applicant and Maurice Sabatier but also against Jean Leguay and René Bousquet, both former senior officials with the rank of prefect under the Vichy regime, and Norbert Techoueyres, who at the material time was the detective superintendent nominated to act on the directions of the public prosecutor. In a judgment of 20 December 1988 the Indictment Division had declared the civil-party application admissible by way of intervention as to the matters of which it had already been properly seised and, as to the remainder, had ordered that the application be forwarded to the Principal Public Prosecutor.

25. Pursuant to Article 681 of the Code of Criminal Procedure, the complaint gave rise to a fresh application to the Criminal Division of the Court of Cassation, which, in a judgment of 26 April 1989, once again designated the Indictment Division of the Bordeaux Court of Appeal to investigate the new facts, but the complaint was subsequently declared inadmissible because a sum to cover costs had not been paid into court within the specified time.

26. Norbert Techoueyres and Jean Leguay died on 4 April 1989 and 3 July 1989 respectively, before being charged, and the proceedings against them accordingly lapsed.

27. The applicant was questioned on four occasions between 31 May and 6 October 1989. On 6 February 1990 the Indictment Division appointed a new judge to continue the investigation.

28. On 16 May 1990 twenty more criminal complaints together with civil-party applications relating to deportations in 1943 and 1944 not covered by the initial complaints were lodged against the applicant by Mr Boulanger on behalf of several individuals. Three of the civil-party applications were declared admissible and added to the file on 3 July 1990. The other seventeen complaints, which related to new accusations against René Bousquet, among other matters, gave rise to seventeen judgments, delivered by the Criminal Division of the Court of Cassation on 19 December 1990, designating the Indictment Division of the Bordeaux Court of Appeal as the investigating authority. After the complaints had been lodged again on 19 June 1991 and exemption from payment into court of a sum to cover costs had been granted, these complaints were joined to the main investigation proceedings by virtue of judgments of the Bordeaux Indictment Division of 14 April 1992.

29. In the meantime, on 12 December 1990 and 21 May 1991, another association had lodged an application to join the pending proceedings as an intervening civil party; that application was declared admissible in a judgment of 20 October 1991.

30. On 19 March 1992 the Principal Public Prosecutor made seventeen applications for a judicial investigation in respect of the applicant and René Bousquet.

31. On 19 April 1992 René Bousquet was charged with crimes against humanity. He was shot dead outside his home on 8 June 1993 and the proceedings against him accordingly lapsed.

32. On 22 June 1992 an additional charge of crimes against humanity was brought against the applicant on account of the facts alleged in the complaints of 16 May 1990.

33. In a judgment of 20 October 1992 the Indictment Division declared admissible a complaint lodged by another association together with an application to join the pending proceedings as an intervening civil party. As some of the other legal persons who had already joined the proceedings had

extended their complaints to cover the matters dealt with in the judgments of 14 April 1992, the Indictment Division recorded the filing of three of those complaints in a judgment of 28 June 1993, another in a judgment of 7 June 1994 and two further ones in a judgment of 20 June 1995.

34. Between June 1992 and July 1995 the investigating judge took evidence from the civil parties (in some thirty-three interviews) and the witnesses (in about thirty-six) and made over thirty journeys to archives to seize evidence.

35. On 3 May 1994 the Indictment Division dismissed an application by the prosecution for the removal from the case file of the booklet “Civil Servants under the Occupation” (*Fonctionnaire sous l'Occupation*), which reproduced *in extenso* the expert historical report set aside by the Court of Cassation on 11 February 1987 and had been published by the applicant's lawyer, Mr Varaut, with a view to exculpating his client in the eyes of the public. The publication in question had been distributed to members of Parliament in 1987 and produced as evidence during libel proceedings brought by the applicant against the magazine *Le Nouvel Observateur*.

36. An appeal on points of law was lodged against the Indictment Division's judgment but an application by the prosecution for its appeal on points of law to be declared immediately admissible was dismissed by the President of the Criminal Division of the Court of Cassation on 10 June 1994.

37. On 28 July 1995, at the end of the investigation, the case file was sent to the Principal Public Prosecutor at the Bordeaux Court of Appeal, who filed his final application on 19 December 1995. In that application, which ran to 185 pages, the Principal Public Prosecutor submitted that the applicant had no case to answer in respect of his involvement in the organisation of the transports of September 1942, November and December 1943 and May 1944, that the prosecution of René Bousquet had lapsed, that the remaining charges should be altered to aiding and abetting abduction and false imprisonment and that the applicant should be committed for trial at the Assize Court for the transports of July, August and October 1942 and January 1944. The Principal Public Prosecutor did not charge the crime of aiding and abetting murder.

38. On 1 and 5 March 1996 five more associations applied to have their civil-party applications formally noted; that was done in the judgment of 18 September 1996 committing the applicant for trial.

39. The proceedings in the Indictment Division of the Bordeaux Court of Appeal against the applicant and three other persons on the charge of crimes against humanity following criminal complaints lodged together with civil-party applications by thirty-five individuals and twenty associations ended with a judgment delivered by the Indictment Division on 18 September 1996 in which it committed the applicant for trial at the Assize Court.

40. It appears from that 169-page judgment that between June 1942 and August 1944 1,560 persons of Jewish origin, including a large number of children, were deported in ten trainloads to Auschwitz Camp, where most of them died, either as the result of inhuman treatment or because they were exterminated. Some of the transports were dispatched after mass arrests among the Jewish population.

41. The Indictment Division noted, *inter alia*, that the unlawful arrests and imprisonment ordered by the German authorities had allegedly been carried out with the active assistance of the applicant, who was at the time the secretary-general of the Gironde prefecture and who, by virtue of the extensive powers delegated to him by the regional prefect, had authority not only over the administrative departments of the prefecture but also over the police and gendarmerie, the Mérignac Camp authorities and the departments set up as a result of the war, such as the Jewish Affairs Department. It further noted that the applicant had allegedly been fully aware of the anti-Jewish policy conducted by the Vichy government and that, as soon as he took office, he had apparently been "convinced that the arrest and imprisonment of Jews and their deportation to the East were leading them inescapably to their deaths ..., even though he might have remained unaware of the ... circumstances ... and the technical methods used ...".

42. The Indictment Division concluded that the active contribution that the applicant was said to have knowingly made through his personal actions to the commission of criminal acts by units of the SIPO-SD (*Sicherheitspolizei-Sicherheitsdienst*), an organisation declared criminal by the Nuremberg International Military Tribunal on 1 October 1946, had formed part of a concerted plan carried out on behalf of Nazi Germany, an Axis country pursuing a policy of ideological hegemony. It held that the applicant could not rely on the instructions given on 8 January 1942 by the French authorities in London [Message by Lieutenant Colonel Tissier broadcast by the BBC on 8 January 1942, urging civil servants working in metropolitan France to stay at their posts, to do the work that they were asked to do and to sabotage it only if it was contrary to the interests of the nation and such sabotage could be carried out without risk. It was also recommended that civil servants should act alone and not even confide in their best friends], nor on duress, the requirements of the law, the orders of his hierarchical superiors or the responsibility of his own subordinates to absolve himself of his own responsibility. It also considered that his membership of the Resistance, on which he relied, did not mean that he could not have assisted the acts perpetrated by the Nazis against the Jews.

43. Consequently, the Indictment Division ordered the applicant's indictment for the offences of aiding and abetting unlawful arrest, false imprisonment, murder and attempted murder amounting to crimes against humanity in respect of four police raids and eight transports of deportees, and committed him for trial at the Gironde Assize Court.

44. The applicant appealed on points of law against that judgment. He pleaded in particular that the proceedings had been null and void, complaining that they had been unfair primarily because of their excessive length, the result of which had been that documents that would have been in his favour had disappeared and witnesses for the defence had died. He also challenged the Indictment Division's decision to commit him for trial for aiding and abetting crimes against humanity on the ground that, in his opinion, individual complicity in the case of such a crime, which was mainly attributable to an institution or an organisation, presupposed that the individual concerned subscribed to the hegemonic and racial ideology of the criminal institution. The applicant maintained that he had never belonged to the Nazi organisations condemned by the Nuremberg Tribunal and that the acts of which he stood accused had been committed in the performance of his duties as secretary-general of the Gironde Prefecture, an organ of the Vichy State, which in his view did not have a hegemonic ideology with the goal of racial extermination. He submitted that for the purposes of the Nuremberg law, which formed the basis of his prosecution, the German State and the Nazi organisations should be regarded as separate entities from the Vichy State, to which crimes against humanity could not therefore be attributed retrospectively. Consequently, he considered that neither could such crimes be attributed to persons who had performed purely administrative duties in the departments for which he was responsible. He also maintained that, contrary to what the Indictment Division had asserted, the fact that he had belonged to the Resistance was sufficient to rule out his participation in a concerted plan.

45. On 23 January 1997 the Criminal Division of the Court of Cassation dismissed the appeal on points of law. Noting that it was the first authority before which the complaint that the proceedings had been unfair had been raised, it declared that complaint inadmissible. It further ruled "that the appellant [had] no interest in criticising the reasons given in the judgment for dismissing the complaint of a violation of Article 6 § 1 of the European Convention on Human Rights, seeing that excessive length of criminal proceedings [did] not affect their validity". The Court of Cassation also considered that there was nothing inadequate or contradictory about the reasons the Indictment Division gave for classifying the offences as aiding and abetting unlawful arrest, false imprisonment and murder or attempted murder, constituting crimes against humanity. It pointed out that indictment divisions had the ultimate authority to assess whether facts amounted to an offence, the role of the Court of Cassation being merely to "verify, supposing the facts to be established, whether their classification [justified] sending the case for trial". It considered that that had been so in the instant case and that "consequently, the grounds of appeal must be rejected, particularly in so far as they refer[red] to the last paragraph of Article 6 of the Statute of the International Military Tribunal, which [required] neither

that a person aiding and abetting crimes against humanity should have subscribed to the policy of ideological hegemony of the principal perpetrators nor that he should have belonged to one of the organisations declared criminal by the Nuremberg Tribunal".

46. In an application of 25 July 1997 the Principal Public Prosecutor asked for the applicant to be placed under judicial supervision.

47. In a judgment of 7 August 1997 the Indictment Division placed the applicant under judicial supervision, with certain obligations. On 18 November 1997 the Criminal Division of the Court of Cassation recorded that the applicant had withdrawn his appeal on points of law against that judgment.

B. The trial

48. On 7 October 1997 the applicant was taken into custody in Bordeaux Prison, pursuant to the arrest warrant included in the judgment of the Indictment Division committing him for trial.

49. The trial in the Gironde Assize Court opened on 8 October 1997. The applicant's lawyer immediately applied for his client's release, pleading his extreme old age (87 years) and his poor state of health following a triple heart bypass operation in 1996. The Assize Court ordered an expert medical report, which was delivered to it on 9 October 1997 and from which it appeared that the applicant's state permitted imprisonment but only in a specialist cardiology unit. That very evening, the applicant had to be admitted to hospital for the night.

50. In a judgment of 10 October 1997, in the light of the expert report, the Assize Court ordered the applicant's release. That decision triggered protests from the civil parties, some of whom threatened to withdraw from the trial, and their protests were given extensive press coverage. The prosecution appealed on points of law against the judgment ordering the applicant's release.

51. The trial, which was initially expected to last two and a half months, lasted nearly six months (from 8 October 1997 to 2 April 1998). The proceedings were interrupted on a number of occasions, mostly because of the applicant's state of health. During the trial, which had a case file containing over 3,000 folders, 6,300 documents were produced in evidence. There were hearings on 94 days, during which 85 witnesses were heard, 12 hours were given over to the public prosecutor's address, 40 hours to the civil parties' submissions and 20 hours to the defence submissions. The court's deliberations lasted 19 hours.

52. At the hearing on 9 October 1997, that is on the day following the opening of the trial, the applicant's lawyer filed written submissions in which he argued that the trial should be declared not to satisfy the requirements of a fair hearing, particularly as the excessive length of the

proceedings had made it impossible to hear certain witnesses; sought to have the proceedings declared null and void; and sought a ruling that the prosecution was barred. When arguing against the application for the proceedings to be declared null and void, the prosecutor referred in particular to the work carried out by the most recent investigating judges, who had made 164 journeys to consult archives, seized and studied 6,354 documents, taken evidence from 95 witnesses and held 85 interviews with civil parties.

53. In an interlocutory judgment of 15 October 1997 the Assize Court dismissed the application for the proceedings against the applicant to be halted, on the following grounds:

> "While it is true that many of the defence witnesses have now died or are incapable of travelling, it must be recognised that the same applies to the prosecution witnesses and that from this point of view and in general the parties are on an equal footing.
>
> The exceptional length of the proceedings which brought Maurice Papon before the Gironde Assize Court is not excessive when it is considered that the complexity of the case, linked for the most part to the long time that has elapsed since the commission of the offences of which the defendant is accused, the number of those offences, the broad time-span over which they were reported, the age of the witnesses and the fact that they were so scattered, required the investigating judges to carry out a very large number of investigations, which they were often forced to conduct themselves because of the very nature of the facts. Added to these problems were others stemming from the widely dispersed documentary sources and the obstacles sometimes encountered in gaining access to them.
>
> Contrary to what has been alleged, the trial at the Gironde Assize Court is not that of a State or an administrative authority but that of a man entitled to rely on the presumption of innocence – a principle with constitutional status which cannot be impaired in the judges' minds by the media excesses denounced by the defence – a man accused of having personally committed acts which, in the words of the indictment, constituted the serious crime of 'aiding and abetting crimes against humanity'.
>
> Lastly, in reply to the argument put forward by Maurice Papon's defence counsel that the judgment delivered on 23 January 1997 by the Criminal Division of the Court of Cassation was 'in complete contradiction not only with Article 6 of the Nuremberg Statute ... but also with Article 123-1 of the Criminal Code', it should be pointed out that it is not for an assize court to assess whether a decision of the Court of Cassation is in conformity with the applicable rules of law."

54. From 23 to 31 October 1997 the proceedings were adjourned because the applicant was hospitalised with bronchitis caused by an infection.

55. In another interlocutory judgment (of 3 November 1997, not produced) the Assize Court dismissed the applicant's application for it be formally noted in the record that an American historian, who was an expert on the Vichy regime, had in his witness statement of 31 October expounded political and historical ideas not directly connected with the facts of which

the applicant was accused. The applicant considered that there had been a violation of the principle that hearings in the Assize Court must be oral, as the person concerned was not a “witness”, not having witnessed any of the offences of which he stood accused.

56. On 14 November 1997 the applicant's lawyer applied to have the correspondence between the occupying German authorities and the prefecture between 1942 and 1944 admitted in evidence.

57. From 17 November to 4 December 1997 the trial had to be adjourned once again on account of the applicant's poor state of health, which had been confirmed by a medical report.

58. When the proceedings resumed on 5 December 1997 the applicant's lawyer filed written submissions in which he applied for further inquiries into the facts to be made with a view to producing in court the whole of the police intendant's archives held by the Gironde archive office instead of the results of selective seizures which did not make it possible to assess exactly what powers had been exercised by the various actors at the prefecture between 1942 and 1944. In a judgment of 11 December 1997 the Assize Court decided to defer its examination of that application.

59. From 23 December 1997 to 5 January 1998 the trial was adjourned.

60. On 7 January 1998 the President of the Assize Court authorised the projection of two video recordings of evidence given by two witnesses during the trial of Klaus Barbie in Lyons in 1987, that of the writer André Frossard on the conditions of detention in Montluc Prison in Lyons and that of Yves Jouffa, former Chairman of the Ligue des droits de l'Homme (Human Rights League), on the conditions in Drancy Camp, near Paris.

61. At the hearing on 26 January 1998, which focused on the transport of 25 November 1943, the applicant was questioned by the public prosecutor, with the President's authorisation and on the basis of the documents in the file, about events preceding that transport, in particular those connected with the organisation of the transport of 2 February 1943, which was mentioned in the judgment whereby the applicant was committed for trial but not in the indictment. The applicant's lawyer immediately filed written submissions seeking to have a formal note of these matters added to the record.

62. On 28 January 1998 Mr Arno Klarsfeld, one of the civil parties' lawyers, published a press release revealing a distant family tie between the President of the Gironde Assize Court and some of the persons whom the applicant was accused of deporting. He criticised the President for failing to report the fact that the mother and two sisters of his aunt by marriage had been part of the December 1943 transport.

63. No application for the judge to withdraw was filed, however, either by the civil parties or by the defence, because the Code of Criminal Procedure only provides for that possibility if the judge is a blood relative or

a relative by marriage of one of the parties up to the degree of second cousin inclusive, which was not so in the instant case. The President of the Assize Court announced that he could not even remember the name of his uncle's wife, and that his uncle had died when he was a child. He did not consider it necessary to withdraw from the proceedings of his own motion.

64. On 2 February 1998 the Assize Court took formal note at the applicant's request that the public prosecutor had questioned him on 26 January 1998, with the authorisation of the President of the Court, about events preceding the transport of 25 November 1943 in respect of which the applicant had been indicted in the Indictment Division's judgment and, in particular, about the organisation of the transport of 2 February 1943, which had not been mentioned in the indictment.

65. In another interlocutory judgment delivered on the same day (not produced), however, it refused to allow an application by some of the civil parties for a formal note to be made in the record that those questions were directly connected with the facts mentioned in the indictment in relation to the applicant's powers. It noted that it was not its task, "if it wished to avoid prejudging the merits of the case and thereby infringing the provisions of Article 316 of the Code of Criminal Procedure, to rule on any direct relationship that might exist between these facts and those referred to in the indictment with regard to Maurice Papon's powers".

66. In an interlocutory judgment of 5 March 1998 (not produced) the Assize Court dismissed the applicant's application of 5 December 1997 for further inquiries into the facts to be made with a view to producing the whole of the police intendant's archives in court, on the ground that, in view of the evidence taken at the hearing, the requested measure did not appear necessary for establishing the truth.

67. On the same day the applicant's lawyer applied to have added to the file a copy of the criminal complaint that he had just lodged against Mr Serge Klarsfeld, the chairman of one of the civil-party associations, on the basis of Article 434-16 of the Criminal Code, which prohibited publication before a final judicial decision of comments intended to exert pressure with a view to swaying a trial court's decision. He criticised Mr Klarsfeld for the content of a number of interviews he had given concerning the revelation of the family tie between some of the victims and the President of the Assize Court, to whom Mr Klarsfeld had imputed bias in the defendant's favour, and impugned the fact that only disciplinary proceedings had been brought by the public prosecutor's office against Mr Klarsfeld's son, who had made the revelation in January 1998.

68. The proceedings were adjourned from 25 to 30 March 1998, following the death of the applicant's wife.

69. In a further interlocutory judgment (of 1 April 1998, not produced) the Assize Court dismissed an application by the applicant for a question to be put as to whether he knew of a concerted Nazi plan to exterminate the

Jews and whether he was prepared to participate in such a plan, on the ground that such a question was included among those intended to establish whether he was guilty of aiding and abetting crimes against humanity.

70. It also refused to allow a subsidiary question to be put as to whether the applicant's resignation, which would have curtailed his Resistance activities, would have changed the system for the extermination of Jews in Bordeaux, on the ground that as it was not possible to assert a legal interest, there was no reason to raise the question of his resignation.

71. On 2 April 1998, in a 123-page judgment delivered after deliberations lasting 19 hours, the Assize Court, replying to 768 questions, found the applicant guilty of aiding and abetting the unlawful arrest and false imprisonment of Jews deported in the transports of July, August, and October 1942 and January 1944, offences that constituted crimes against humanity. He was acquitted of the charges of aiding and abetting murder and attempted murder.

72. The applicant was sentenced to ten years' imprisonment and stripped of his civil, civic and family rights for ten years. In a judgment of 3 April 1998 (not produced) the Assize Court ruled on the civil claims.

C. The proceedings in the Court of Cassation

73. On 3 April 1998 the applicant appealed on points of law against his conviction and on 14 December 1998 he filed further pleadings containing ten grounds of appeal, six of which referred expressly to Article 6 of the Convention.

74. In a telegram of 8 September 1999 the Principal Public Prosecutor at the Court of Cassation requested that the applicant be notified of his obligation to surrender to custody prior to the hearing in the Court of Cassation scheduled for 21 October 1999. Notice thereof was served on the applicant on 16 September 1999.

75. On 17 September 1999 the applicant lodged with the Indictment Division of the Bordeaux Court of Appeal an application for exemption from the obligation to surrender to custody, which he withdrew on 27 September 1999, making a fresh application to the Assize Court. On 4 October 1999 the Assize Court ruled that it had no jurisdiction to make such an order. The applicant appealed on points of law. On the same day he again applied to the Indictment Division for exemption from the obligation to surrender to custody. He relied on Article 6 of the Convention, his age (89 years) and his state of health.

76. In a judgment of 12 October 1999 the Indictment Division first dealt with an application by the applicant for a declaration that Article 583 of the Code of Criminal Procedure should be deemed null and void by virtue of Article 6 § 1 of the Convention. It said:

> "Although the provisions of the ... Convention ... have been incorporated into the French legal system in accordance with Article 55 of the Constitution and although the courts have jurisdiction to determine, in an individual case, whether a statutory provision conforms with the requirements of the Convention, it is still necessary for that provision to serve as the basis on which the case is submitted to them.
>
> In the instant case Article 583 of the Code of Criminal Procedure gives the Indictment Division jurisdiction only to deal with a specific matter of judicial administration, namely applications for exemption from the obligation to surrender to custody.
>
> The task of enforcing the obligation to surrender to custody lies exclusively with the Court of Cassation, as it alone can decide what consequences shall flow from a failure to surrender to custody. It is therefore the Court of Cassation's task to rule on applications for Article 583 not to be applied to cases submitted to it and, where it has allowed such an application, to decide not to declare that the applicant has forfeited his right of appeal."

77. The Indictment Division went on to dismiss the application for exemption from the obligation to surrender to custody, holding that, in view of the length of the sentence imposed, the security provided by the applicant seemed inadequate; that the medical certificate he had produced did not indicate a significant deterioration in his state of health since the expert opinion of October 1997; and that his state of health did not appear to preclude detention in a hospital unit, the arrangements for which were a matter for the prison authorities.

78. The applicant did not surrender to custody and left France to take refuge in Switzerland. However, the Swiss authorities ordered him to leave Switzerland, on a date not indicated in the case file.

79. In a judgment of 21 October 1999, after a public hearing during which the applicant's lawyers submitted their observations on his grounds of appeal, the Criminal Division of the Court of Cassation held that the applicant had forfeited his right to appeal against the Assize Court's judgment of 2 April 1998, pursuant to Article 583 of the Code of Criminal Procedure, on the ground that "the appellant, who [had been] sentenced to a term of imprisonment of more than one year, [had] not surrendered to custody and [had] not been exempted from that obligation".

80. In two judgments of 20 December 2000 the Court of Cassation dismissed the appeals lodged by the applicant against the judgments delivered by the Assize Court and the Indictment Division on 4 and 12 October 1999 on his applications to be exempted from the obligation to surrender to custody, on the ground that they were devoid of purpose since in the meantime the applicant had forfeited his right to appeal on points of law against his conviction by the Assize Court.

II. RELEVANT DOMESTIC LAW

81. As regards the obligation to surrender to custody before an appeal on points of law is heard, the relevant provision of the Code of Criminal Procedure at the material time reads as follows:

Article 583 (as worded following Law no. 99-515 of 23 June 1999)

> "Convicted persons sentenced to a term of imprisonment of more than one year who have not surrendered to custody or have not been exempted, with or without payment of a security, from surrendering to custody by the court that tried them shall forfeit their right of appeal on points of law.
>
> The memorandum of their imprisonment or the judgment granting them exemption shall be produced to the Court of Cassation, at the latest when the case is called on.
>
> In order for his appeal to be admissible, it shall be sufficient for the appellant to provide evidence that he has given himself up at a prison either in the place where the Court of Cassation sits or in the place where he was convicted; the chief warder of that prison shall receive him there on the order of the Principal Public Prosecutor at the Court of Cassation or of the chief prosecutor at the court of trial."

82. Article 583 was repealed by the law of 15 June 2000 "to strengthen protection of the presumption of innocence and the rights of victims". The law also instituted two levels of jurisdiction in serious criminal cases by providing for the possibility of appealing against the judgments of assize courts.

83. The law of 15 June 2000 also inserted into the Code of Criminal Procedure a Part III concerning "review of a criminal decision as a result of a judgment of the European Court of Human Rights".

The new Articles 626-1 and 626-4 provide:

Article 626-1

> "An application may be made for review of a final criminal decision on behalf of any person found guilty of an offence where it has been held in a judgment of the European Court of Human Rights that he was convicted in breach of the Convention for the Protection of Human Rights and Fundamental Freedoms or its Protocols, provided that, in its nature and seriousness, the breach found entails injurious consequences for the convicted person which cannot be remedied by the 'just satisfaction' awarded under Article 41 of the Convention."

Article 626-4

> "If it considers the application to be justified, the committee shall proceed in accordance with the following provisions:
>
> (a) Where a review of the convicted person's appeal on points of law, in a manner consistent with the provisions of the Convention, is apt to remedy the violation found

by the European Court of Human Rights, the committee shall remit the case to the Court of Cassation, which shall sit as a full court to hear the case;

(b) In other cases, the committee shall remit the case to a court of the same hierarchy and level as the one which gave the impugned decision ...”

THE LAW

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

84. The applicant complained that under Article 583 of the Code of Criminal Procedure he had forfeited his right to appeal on points of law. He submitted that this was an interference with his right of access to a court as guaranteed by Article 6 § 1 of the Convention, which provides:

> “In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

A. Arguments of the parties

1. The applicant

85. The applicant relied on *Khalfaoui v. France*, judgment of 14 December 1999 (no. 34791/97, ECHR 1999-IX). In his submission, the argument that the result in *Khalfaoui* could not be transposed to cases involving a serious crime (*crime*) had been rejected by the Court itself in *Krombach v. France*, judgment of 13 February 2001 (no. 29731/96, ECHR 2001-II), in which it clearly accepted that the principle in *Khalfaoui* applied without distinction to both serious crimes and lesser serious offences (*délits*). As to the need to enforce the Assize Court's judgment in the absence of any arrest warrant, the applicant said that that justification was a serious misreading of the position of principle taken up in *Khalfaoui*, according to which the obligation to surrender to custody or else forfeit the right to appeal on points of law was an excessive interference with the right of access to a court.

86. The authorities also had available to them all the ordinary means of enforcing a judgment after dismissal of an appeal to the Court of Cassation. Furthermore, the applicant pointed out that he had been the last person to whom a procedure of surrendering to custody had been applied, as if it had been a question of making a “final example” of his case. Lastly, he argued that in *Khalfaoui*, cited above, the Court had linked its decision to respect

for the presumption of innocence, without taking any account of the offences charged.

2. *The Government*

87. The Government submitted that, regard being had to the proceedings as a whole, the forfeiture of the right to appeal on points of law was not a disproportionate interference with the applicant's right of access to the Court of Cassation. They maintained, firstly, that the instant case could be distinguished from *Khalfaoui* in that Mr Khalfaoui had been tried for lesser serious offences by a court of appeal, whereas the applicant had been convicted of a serious crime by an assize court. At the material time, however, the Assize Court had no power to issue a warrant for the arrest of a defendant appearing as a free man and the procedure of surrender to custody was the only means of securing his person.

88. The Government also emphasised the extreme seriousness of the offences of which the applicant had been convicted, offences which undermined the very values of humanity. That being so, the Government concluded that the decision that the applicant should forfeit his right of appeal on account of his failure to surrender to custody was not a disproportionate measure and that he had consequently not suffered excessive interference with his right of access to the Court of Cassation.

89. In their supplementary observations the Government referred to the Court's judgment of 16 October 2001 in *Eliazer v. the Netherlands* (no. 38055/97, ECHR 2001-X), in which it had held that there had not been a disproportionate interference with the applicant's access to the Supreme Court, after noting that the applicant's lawyer had been heard on appeal and had been allowed to make submissions to the Supreme Court. The Government considered that it was appropriate to apply that approach, since the applicant had been able to be defended during the investigation phase and at the Gironde Assize Court and also in the Court of Cassation, inasmuch as his lawyers had been able to present argument on his behalf both as to forfeiture of the right to appeal on points of law and as to the grounds relied on in that appeal.

B. The Court's assessment

90. The Court reiterates that the right to a court, of which the right of access constitutes one aspect, is not absolute but may be subject to implied limitations, notably as regards the requirements for an appeal to be admissible. Nevertheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and

the aim sought to be achieved (see, among other authorities, *Khalfaoui*, cited above, §§ 35-36).

91. The Court has underlined – in particular, in *Poitrimol v. France* (judgment of 23 November 1993, Series A no. 277-A, p. 15, § 38) and in *Omar* and *Guérin v. France* (judgments of 29 July 1998, *Reports of Judgments and Decisions* 1998-V, p. 1841, § 41, and p. 1869, § 44, respectively), which concerned the inadmissibility of appeals on points of law – the crucial role of cassation proceedings, which constitute a special stage of criminal proceedings whose consequences may prove decisive for the accused.

92. In *Omar* and *Guérin*, the Court held that "where an appeal on points of law [was] declared inadmissible solely because ... the appellant ha[d] not surrendered to custody pursuant to the judicial decision challenged in the appeal, [that] ruling compel[led] the appellant to subject himself in advance to the deprivation of liberty resulting from the impugned decision, although that decision [could not] be considered final until the appeal ha[d] been decided or the time-limit for lodging an appeal ha[d] expired". The Court took the view that this "impair[ed] the very essence of the right of appeal, by imposing a disproportionate burden on the appellant, thus upsetting the fair balance that must be struck between the legitimate concern to ensure that judicial decisions are enforced, on the one hand, and the right of access to the Court of Cassation and exercise of the rights of the defence on the other" (*Omar* and *Guérin*, cited above, p. 1841, §§ 40-41, and p. 1868, § 43, respectively).

93. In *Khalfaoui* (cited above) the Court had to rule on the applicant's forfeiture of the right to appeal on points of law due to his not having surrendered to custody or obtained an exemption.

94. Having noted that there was no great difference between the inadmissibility of an appeal on points of law and forfeiture of the right so to appeal, the Court held that "having regard to the importance of the final review carried out by the Court of Cassation in criminal matters, and to what [was] at stake in that review for those who [might] have been sentenced to long terms of imprisonment, ... this [was] a particularly severe sanction affecting the right of access to a court guaranteed by Article 6 of the Convention" (§ 47). The Court was also of the view that the possibility of requesting exemption from the obligation to surrender to custody was not "capable of eliminating the disproportionality of the sanction of forfeiture of the right to appeal on points of law" (§ 53).

95. The Court is not persuaded by the Government's argument in the instant case derived from the special nature of proceedings relating to serious crimes. In the first place, the approach taken in *Khalfaoui* was reaffirmed in *Krombach* in which the applicant had been convicted of a serious crime by an assize court, and, secondly, the Court cannot but reiterate the principle established in *Khalfaoui* (§ 49) that "respect for the

presumption of innocence, combined with the suspensive effect of appeals on points of law, militates against the obligation for a defendant at liberty to surrender to custody, however short a time his incarceration may last".

96. As to the obligation to surrender to custody, the Court noted that, while the concern to ensure that judicial decisions were enforced was in itself legitimate, the authorities had other means at their disposal whereby they could take the convicted person in charge, whether before or after the appeal on points of law was heard. The Court said: "In practice, the obligation to surrender to custody is intended to substitute for procedures having to do with the exercise of police powers an obligation which is imposed on defendants themselves, and which is backed up moreover by the sanction of depriving them of their right to appeal on points of law" (§ 44).

97. Lastly, the Court held that the obligation to surrender to custody was not justified by the special features of the procedure in the Court of Cassation either (§ 45).

98. As to the Government's argument based on the extreme seriousness of the offences of which the applicant stood accused, the Court does not overlook the fact. However, the fact that the applicant was prosecuted for and convicted of aiding and abetting crimes against humanity does not deprive him of the guarantee of his rights and freedoms under the Convention (see *Koch v Germany*, no. 1270/61, Commission decision of 8 March 1962, Yearbook 5, p. 134).

99. The Government also cited *Eliazer*, in which the Court held that there had been no violation of Article 6 § 1 of the Convention. However, the Court noted in that judgment (§ 33) that, unlike the applicants in *Poitrimol*, *Omar*, *Guérin* and *Khalfaoui*, firstly, Mr Eliazer had been under no obligation to surrender to custody as a precondition of the objection proceedings before the Joint Court of Justice (in the Netherlands Antilles and Aruba) taking place and, secondly, it had been open to him to appeal to the Court of Cassation once he chose to be present at the objection proceedings.

100. That being so, the Court sees no reason to depart from the conclusion it reached in *Khalfaoui*. Noting that the applicant forfeited his right to appeal on points of law because he had failed to surrender to custody as required by Article 583 of the Code of Criminal Procedure as applicable at the time, it considers that, regard being had to all the circumstances of the case, he suffered disproportionate interference with his right of access to a court and, therefore, with his right to a fair trial (see *Goth v. France*, no. 53613/99, § 36, 16 May 2002).

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 7 TO THE CONVENTION

101. The applicant complained that, because he had lost the right to appeal on points of law, he had been deprived of the right to have his conviction and sentence reviewed by a higher tribunal. He relied on Article 2 of Protocol No. 7 to the Convention, which provides:

> "1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.
>
> 2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal."

102. The applicant argued that the right of appeal in criminal matters was an extension of the right of access provided for in Article 6 § 1 and could be regarded as a *lex specialis*. The declaration that he had forfeited his right of appeal on points of law had accordingly infringed both provisions simultaneously.

103. In his submission, the breach of the right of appeal was all the more serious as in France at the time review by a higher court was possible only by means of an appeal on points of law to the Court of Cassation, which could deal only with issues of law.

104. The Government submitted that there had not been a breach of Article 2 of Protocol No. 7 in the case. Citing the interpretative declaration made by France when the instrument of ratification of the Protocol had been deposited, they pointed out that the Court had on several occasions held that the French system in force at the material time conformed to Article 2 of Protocol No. 7. The Government reiterated the arguments set out in relation to the right of access to a court, pointing out that the Court had held that the States enjoyed a wide discretion in the matter. They concluded that there had been no disproportionate interference with the applicant's access to a higher tribunal.

105. The Government argued, lastly, that were the Court to hold that the applicant's right of access to the Court of Cassation for the purposes of Article 6 § 1 had been infringed, that finding would not *ipso facto* entail a breach of the right to an appeal. The applicant had been able to apply to the Court of Cassation and lodge pleadings, and the appeal had been considered at a hearing at which all the parties had been able to address the court. Although the Court of Cassation had delivered a judgment in which it ruled that the right to appeal had been forfeited, it nevertheless heard the case and

had not been able to do other than register the consequences of the applicant's failure to comply with the procedural rules.

106. The Court has already had occasion to hold that the French system in force at the material time was in principle compatible with Article 2 of Protocol No. 7 (see, in particular, *Krombach*, cited above, § 97, and the decisions cited there).

There has accordingly been no violation of Article 2 of Protocol No. 7 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. By Article 41 of the Convention,

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

A. Damage

108. Under the head of pecuniary damage, the applicant sought the following sums, arising from his conviction and sentence by the Assize Court: 372,750 euros (EUR) in respect of the suspension of his pension as a former member of Parliament for the duration of his sentence (ten years), EUR 633,718 in respect of the suspension of his pension as a senior civil servant and EUR 701,265 in respect of the civil sentences imposed by the Assize Court. As to non-pecuniary damage, he claimed a sum of EUR 1 million arguing that he was the oldest prisoner in Europe, that his state of health no longer allowed imprisonment and that at an age at which a peaceful retirement was a normal aspiration he had been faced with a lengthy ordeal of court proceedings in a stormy political and media climate, which had permanently tarnished his reputation.

109. The Government pointed out that only damage arising directly from the alleged violations could, where appropriate, give rise to compensation. As to the claims for pecuniary damage, the Government argued that if the Court did find a violation of the applicant's right of access to the Court of Cassation, the damage he would have sustained would consist only in the loss of an opportunity to have his appeal heard by the Court of Cassation and, if appropriate, the Assize Court's judgment quashed and the case remitted to another assize court. It was impossible to assert, on the one hand, that the Court of Cassation would have quashed the judgment or, on the other, that the court to which the case might have been remitted would have acquitted the applicant. The Government therefore submitted that the applicant's claims in respect of pecuniary damage should be dismissed.

110. As to the claim under the head of non-pecuniary damage, the Government argued mainly that it could only be dismissed as in a decision of 7 June 2001 on another application made by the applicant the Court had held that his detention was compatible both with his advanced age and with his state of health. In the event of the Court's considering that violations of Article 6 § 1 of the Convention and Article 2 § 1 of Protocol No. 7 had been established, only non-pecuniary damage associated with the loss an opportunity of having an appeal heard could be found to have been sustained, and the Government proposed an award of 30,000 French francs (FRF) (EUR 4,573.47) under that head.

111. The Court considers that in the absence of any direct causal link between the alleged pecuniary damage and the violation found, there is no ground for awarding compensation under this head.

112. As far as non-pecuniary damage is concerned, the Court considers that the circumstances relied on by the applicant (see paragraph 108 above) have no connection with the violation found (see *Omar*, cited above, p. 1843, § 49, and *Poitrimol*, cited above, p. 16, § 42). That being so, there is no ground for awarding compensation under this head.

B. Costs and expenses

113. In respect of lawyers' fees and expenses for the domestic proceedings, the applicant claimed reimbursement of the following sums:

(a) Mr Varaut's expenses for the trial at the Assize Court (as indicated in an accountant's certificate of 11 January 2002 detailing his expenses relating to the applicant's defence at the Assizes from 27 September 1997 to 2 April 1998): FRF 667,376 (EUR 101,740), broken down into travel expenses (FRF 342,223), fees, inclusive of tax, of an assisting lawyer (FRF 202,917) and expenses of a driver/bodyguard (FRF 122,236);

(b) Mr Boré's and Mr Emery's fees for the proceedings in the Court of Cassation: FRF 138,690 (EUR 22,144).

As to the proceedings before the Court, the applicant sought FRF 83,720 for Mr Varaut's fees (and produced two fee notes, not itemised, of 6 March and 18 June 2001), and FRF 35,880 for Mr Vuillemin's fees, totalling FRF 119,600 (EUR 18,223), and 56,266 Swiss francs (EUR 37,510.65) for Mr Argand's fees.

114. As regards the lawyers' fees and expenses, the Government considered the claims to be particularly excessive and proposed an award of FRF 30,000 (EUR 4,573.47).

115. The Court points out that if it finds that there has been a violation of the Convention, it may award the applicant not only the costs and the expenses incurred before the Strasbourg institutions but also those incurred in the national courts for the prevention or redress of the violation (see, among other authorities, *Hertel v. Switzerland*, judgment of 25 August

1998, *Reports* 1998-VI, p. 2334, § 63). In the instant case, as the only violation found relates to the lack of access to the Court of Cassation, the Court considers that it is not necessary to reimburse the costs and expenses incurred during the investigation and trial phases of the case. This part of the claim must accordingly be dismissed.

116. The applicant is, on the other hand, entitled to claim reimbursement of the costs relating to the applications for exemption from the obligation to surrender to custody and to the appeal on points of law against his conviction by the Assize Court. However, as regards the applications for exemption, the Court does not have before it any quantified claim or any fee note relating to those proceedings; the accountant's certificate mentions only Mr Varaut's expenses in the proceedings at the Assize Court, and no mention is made of any steps taken subsequently. That being so, the Court cannot award any sum under this head. As to the proceedings in the Court of Cassation following the conviction by the Assize Court, the applicant should be awarded FRF 60,300 (EUR 9,192.68), corresponding to the sum paid in fees to Mr Emery. The Court cannot, however, take into account the fees paid to Mr Boré, since they relate to appeals on points of law made in the investigation phase of the case.

117. As regards the fees relating to the present proceedings, the Court has assessed the claim in the light of the principles laid down in its case-law (see the following judgments: *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II; *Oztürk v. Turkey* [GC], no. 22479/93, § 83, ECHR 1999-VI; and *Witold Litwa v. Poland*, no. 26629/95, § 88, ECHR 2000-III). It points out that under Article 41 of the Convention, it reimburses costs if it has been established that they were actually and necessarily incurred and are reasonable as to quantum.

118. The Court observes, firstly, that the applicant instructed only Mr Varaut and Mr Argand to represent him before it. It therefore cannot take into account Mr Vuillemin's fee note, which contains no items relating to steps taken in the present proceedings. While the initial application, lodged by Mr Argand on 14 January 2000, was co-signed by Mr Varaut, the observations in reply to the Government's observations and the applications for just satisfaction were drawn up by Mr Argand. Mr Varaut's fee note of 18 June 2001, which indicates only a total sum, contains no other details and the note of 6 March 2001 appears to refer to proceedings against the civil parties in the Melun *tribunal de grande instance*. That being so, the Court is not in a position to satisfy itself that the fees paid to Mr Varaut were actually and necessarily incurred for the present proceedings and it considers that there is no ground for awarding reimbursement of them. As to Mr Argand's fees, contained in a note setting out a detailed list of work done, and having regard to the fact that only two of the complaints initially made were declared admissible, the Court considers it reasonable to award the applicant EUR 20,000 under this head.

C. Default interest

119. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds* that there has been no violation of Article 2 of Protocol No. 7 to the Convention;

3. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 29,192.68 (twenty-nine thousand one hundred and ninety-two euros sixty-eight cents) in respect of costs and expenses, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in French, and notified in writing on 25 July 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH — Registrar

Christos ROZAKIS — President

A declaration by Mr Costa is annexed to this judgment.

C.L.R.
E.F.

DECLARATION BY JUDGE COSTA

(Translation)

The applicant maintained that the European Convention on Human Rights had been breached in eleven respects in the proceedings connected with his conviction for aiding and abetting crimes against humanity. His case has been upheld in only one respect; this was inevitable in view of the case-law, which is the same for everyone. I therefore voted accordingly.

This violation occurred because the Court of Cassation applied a provision of the Code of Criminal Procedure which was repealed a few months later by the Law of 15 June 2000. Another few months and France would not have been found to have committed the breach. This observation serves, I think, to put the significance and impact of this judgment into perspective, as does the fact that the applicant's claims for just satisfaction under the heads of pecuniary and non-pecuniary damage have been dismissed.