



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

COURT (CHAMBER)

**CASE OF KOLOMPAR v. BELGIUM**

*(Application no. 11613/85)*

JUDGMENT

STRASBOURG

24 September 1992

**In the case of Kolompar v. Belgium\*,**

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 R. BERNHARDT,

Mr Thór VILHJÁLMSSON,

Mr F. MATSCHER,

Mr B. WALSH,

Mr A. SPIELMANN,

Mr J. DE MEYER,

Mr I. FOIGHEL,

Mr F. BIGI,

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

Having deliberated in private on 27 March and 27 August 1992,

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 19 April 1991, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 11613/85) against the Kingdom of Belgium lodged with the Commission under Article 25 (art. 25) by a Yugoslavian national, Mr Djula Kolompar, on 10 June 1985.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Belgium recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 5 paras. 1 and 4 (art. 5-1, art. 5-4) of the Convention.

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\* The case is numbered 49/1991/301/372. 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.

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

3. The Chamber to be constituted included ex officio Mr J. De Meyer, the elected judge of Belgian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)).

On 23 April 1991, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mrs D. Bindschedler-Robert, Mr J. Pinheiro Farinha, Mr B. Walsh, Mr R. Bernhardt, Mr A. Spielmann and Mr I. Foighel (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr F. Bigi and Mr F. Matscher, substitute judges, replaced Mrs Bindschedler-Robert and Mr Pinheiro Farinha, who had resigned and whose successors at the Court had taken up their duties before the hearing (Rules 2 para. 3 and 22 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Belgian Government ("the Government"), the Delegate of the Commission and the applicant's lawyer on the organisation of the procedure (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 24 September 1991 and the applicant's memorial, including his claims for just satisfaction (Article 50 of the Convention) (art. 50), on 27 September and 1 October. By a letter of 10 October 1991, the Secretary to the Commission informed the Registrar that the Delegate would submit oral observations.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 23 March 1992. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr J. LATHOUWERS, Legal Officer,  
Ministry of Justice,

*Deputy Agent,  
Counsel;*

Mr P. LEMMENS, advokaat,

- for the Commission

Mr A. WEITZEL,

*Delegate;*

- for the applicant

Mr W.A. VENEMA, advokaat en prokureur,

*Counsel.*

The Court heard addresses by Mr Lemmens for the Government, by Mr Weitzel for the Commission and by Mr Venema for the applicant, as well as their answers to its questions. The Agent of the Government produced various documents on the occasion of the hearing.

## AS TO THE FACTS

### **A. The proceedings brought against the applicant and the extradition request**

#### *1. In Italy*

6. Having been extradited from Belgium to Italy, Mr Djula Kolompar was released from prison on 27 December 1990; he currently resides in Amsterdam.

7. On 13 June 1980 the Florence Assize Court sentenced him in absentia to eighteen years' imprisonment, having convicted him of, inter alia, attempted rape and attempted murder committed on 24 December 1977.

8. By a judgment of 8 May 1981, which became final a month later, the Florence Assize Court of Appeal, also giving judgment in absentia, reduced the prison sentence to ten years; the accused had been declared untraceable (irreperibile) and then to be evading arrest (latitante).

Pursuant to a Presidential Decree of 1978, the Florence Assize Court of Appeal and the Court of Appeal itself granted the applicant, on 23 November 1981 and 8 March 1982, remission of sentence amounting to a total of a little over two and a half years.

9. In 1982 Italy requested the Netherlands authorities to extradite the applicant. This request was refused following an unfavourable opinion from the Rotterdam District Court (Arrondissementsrechtbank) of 14 October 1982; the Rotterdam court took the view that the applicant's right to defend himself had not been respected.

10. In May 1983 Italy made a similar request to Belgium, where Mr Kolompar was then staying.

11. On 7 March 1984 the judgment of 8 May 1981 and the warrant for his arrest as a convicted person (ordine di carcerazione di condannato) issued by the principal public prosecutor at the Florence Court of Appeal on 13 March 1982, together with an official Dutch translation of those documents, were served on the applicant by a bailiff in accordance with the Belgian Extradition Act of 15 March 1874 ("the 1874 Act") and the Belgian-Italian extradition treaty of 15 January 1875. The bailiff's writ stated that the applicant would be detained with a view to his extradition.

#### *2. In Belgium*

12. On 22 January 1984 Mr Kolompar had been arrested in Belgium on suspicion of aggravated theft and attempted theft committed in that country; the following day an Antwerp investigating judge had remanded him in custody in respect of these charges.

The investigating judge revoked his detention order on 11 April 1984, but the applicant remained in custody in connection with the extradition proceedings (see paragraph 11 above).

13. On 4 January 1985 the Antwerp Criminal Court sentenced him to one year's imprisonment for the offences committed in Belgium. This judgment was upheld by the Antwerp Court of Appeal, whose judgment of 25 April 1985 became final a month later.

By a letter of 4 June 1985 the Minister of Justice informed the applicant that, on account of the period that he had spent in detention since 22 January 1984 (see paragraph 12 above), the prison term was to be deemed to have been completed on 20 January 1985.

### **B. The subsequent extradition proceedings**

14. Following a favourable opinion from the indictments chamber (Kamer van Inbeschuldigingstelling) of the Antwerp Court of Appeal on 24 April 1984, on 2 May the Belgium Minister of Justice authorised Mr Kolompar's extradition to Italy.

#### *1. The application for a stay of execution of 29 October 1984*

15. On 29 October 1984 the applicant asked the Minister to reconsider his decision and to stay the execution of the extradition order in the meantime. He invoked the opinion of the Rotterdam District Court of 14 October 1982 (see paragraph 9 above).

On 13 December 1984 he requested the Minister to confirm in writing that he had stated during a meeting with the applicant's lawyer on 7 December 1984 that he was prepared to grant an application for a stay of execution of the extradition order.

16. On 17 December 1984 the Minister replied to him that the extradition was a matter for the Italian authorities, who might possibly withdraw their request. He advised the applicant to apply to those authorities without delay in that connection, adding that, if the applicant so requested, he could stay the execution of the extradition order; the duration of such a measure could not however exceed a reasonable time.

#### *2. The application for a stay of execution of 2 January 1985*

17. By letter of 2 January 1985 Mr Kolompar again asked the Minister of Justice to stay the execution of the extradition decision. In support of his request he provided statements from various witnesses, according to which he had been in Denmark on 24 December 1977, the date of the offences for which he had been convicted in Italy.

18. The Minister contacted the Italian authorities. He drew their attention to the applicant's version of events and asked them to state whether they wished to maintain their extradition request.

19. On 28 March 1985 the Director of the Rome extraditions department replied to the above query in the affirmative. He stressed that if there was any new evidence it could serve as the basis for an application for retrial of the case (Article 553 of the Italian Code of Criminal Procedure).

On 4 April 1985 the Minister sent to the applicant a copy of this letter, notifying him that the extradition procedure would be continued as soon as it was no longer necessary to keep him at the disposal of the Belgian authorities for the offences committed in Belgium (see paragraph 13 above).

20. On 21 June 1985 Mr Kolompar wrote to the Minister of Justice to ask him to obtain from Interpol's Copenhagen office information which he had himself unsuccessfully sought from the Danish consulate general in Rotterdam.

As a result the Minister instructed the Antwerp public prosecutor's office to determine the accuracy of the applicant's claims concerning his one-time presence in Denmark (see paragraph 17 above).

A message from Interpol-Copenhagen to Interpol-Brussels of 14 August 1985 indicated that the Danish police had questioned the applicant on 12 April 1978 when he had been in custody in Gentofte in connection with alleged forgery, attempted theft and receiving stolen goods. He had stated that he had entered Denmark on 10 April 1978 and that it was the first time that he had visited the country. In June 1978 his wife had affirmed that she had herself arrived in the country on 23 May 1978 and that her family had lived for a long time near Rome. However, another Yugoslavian national, probably residing in the Netherlands, had maintained in May 1978 that the couple were living in Italy at the time and that the applicant had visited him on several occasions. A Danish police-officer claimed to remember Mr Kolompar but could not certify that he had seen him on 24 December 1977.

The text of the message was transmitted to the Antwerp criminal police on 16 August 1985; on 17 September 1985 the principal public prosecutor's office of that town sent to the Minister of Justice a report on the information obtained from Interpol-Copenhagen.

*3. The application for release of 15 June 1985 and the application for a stay of execution of 21 June 1985*

21. In the meantime Mr Kolompar, having been advised orally that his extradition could take place on 25 June 1985, submitted an application for his release to the committals chamber (Raadkamer) of the Antwerp First-Instance Court on 15 June, founded essentially on the alleged unlawfulness of such a measure.

22. By an order of 21 June the committals chamber declared the application inadmissible; the applicant appealed immediately, relying on

Articles 3, 5 and 6 para. 1 (art. 3, art. 5, art. 6-1) of the Convention. In addition, he requested the Minister of Justice, again on 21 June, to stay the execution of the extradition order pending a final decision on his application of 15 June. On 24 June the Minister sent by telex instructions to this effect to the principal public prosecutor's office in Antwerp. The applicant's lawyer was notified of this by telephone.

On 5 July 1985 the indictments chamber of the Antwerp Court of Appeal confirmed the order of 21 June 1985 on the ground, *inter alia*, that it was not empowered to order the applicant's release. It noted that the fourth subsection of section 5 of the 1874 Act, which provided for the possibility of applying to the investigating authorities for release, ceased to apply once the detainee had been placed at the disposal of the Government with a view to extradition. It added that the provisions of the Convention cited by Mr Kolompar did not in themselves confer on it jurisdiction to rule on the matter.

23. On 8 October 1985 the Court of Cassation dismissed the applicant's appeal filed on 8 July. It found that no grounds had been validly and usefully submitted and took the view that the indictments chamber had complied with the essential procedural requirements or the formalities whose disregard entailed nullity and that its decision was lawful.

*4. The application of 17 September 1985 for an order prohibiting the extradition and for the applicant's release*

24. On 17 September 1985 the applicant filed an urgent application with the President of the Brussels First-Instance Court seeking an order prohibiting his extradition, which, he contended, would be contrary to Articles 6 para. 1, 3 and 14 (art. 6-1, art. 3, art. 14) of the Convention on account, *inter alia*, of the incompatibility of the proceedings conducted against him in Italy with the Convention; he requested further his immediate release on the ground that his detention was also unlawful for the reasons which his lawyer had given before the indictments chamber of the Antwerp Court of Appeal on 5 July 1985 (see paragraph 22 above).

By a letter of 4 November 1985 the Minister of Justice drew the attention of the Antwerp principal public prosecutor's office to the desirability of staying the execution of the extradition order until a final decision had been given on Mr Kolompar's application.

The Belgian State filed its submissions on 24 December 1985; Mr Kolompar submitted his at a hearing held on 19 March 1986.

On 21 March the President of the Brussels First-Instance Court found that it was not necessary to make an urgent ruling. He noted that under the first paragraph of Article 584 of the Judicial Code he was empowered to give "a provisional ruling where he [recognised] that there was urgency, in all matters except those which are excluded by law from the competence of the courts" and that, according to academic writers and the case-law, this

jurisdiction extended to cases of unlawful acts by the authorities (onrechtmatige overheidsdaad). In the present case, however, the contested detention did not represent such an act because it had been lawfully and properly ordered in the context of extradition proceedings in accordance with the Act of 15 March 1874 and the Belgian-Italian extradition treaty of 15 January 1875. As far as the extradition was concerned, the President considered that it was not for him to determine whether the applicant's conviction by the Florence Assize Court had infringed the Convention. He added that the applicant could, as the Director of the Rome extraditions department had pointed out (see paragraph 19 above), file an application for a retrial if the conditions set out in Article 553 of the Italian Code of Criminal Procedure were satisfied.

25. After the Belgian State had served this order on Mr Kolompar, the latter filed an appeal against it by a document lodged with the registry of the Brussels Court of Appeal on 12 June 1986. By a letter registered on 19 June he requested that the case be heard at a later date.

The Belgian State filed its submissions on 19 November 1986, but the proceedings remained pending. The Belgian lawyer appointed to represent the applicant had withdrawn his services pending payment of an advance. His client claimed that he was not in a position to pay, but he had not informed the authorities of this and had not requested legal aid.

#### *5. The applicant's extradition (25 September 1987)*

26. By a letter from his lawyer, dated 13 September 1987, the applicant informed the Minister of Justice that he no longer opposed his extradition in view of the length of the proceedings instituted both at national and international level, and that he waived his right to rely on the undertaking not to hand him over to Italy pending the outcome of the appeals lodged in Belgium.

Twelve days later Mr Kolompar was extradited to Italy. He was released from prison there on 27 December 1990 under an amnesty.

## PROCEEDINGS BEFORE THE COMMISSION

27. Mr Kolompar lodged his application with the Commission (application no. 11613/85) on 10 June 1985. He alleged violations of Article 5 paras. 1, 2 and 4 (art. 5-1, art. 5-2, art. 5-4) of the Convention by Belgium and of Articles 3 and 6 para. 1 (art. 3, art. 6-1) by Italy.

28. On 16 May 1990 the Commission declared the complaints based on Article 5 paras. 1 and 4 (art. 5-1, art. 5-4) admissible; it found the remainder of the application inadmissible and in particular the complaints concerning Italy.

In its report of 26 February 1991 (made under Article 31 of the Convention) (art. 31), it expressed the opinion, by eight votes to three, that there had been a breach of Article 5 para. 1 (art. 5-1) and, by ten votes to one, of Article 5 para. 4 (art. 5-4). The full text of its opinion and of the partly dissenting opinion contained in the report is reproduced as an annex to this judgment\*.

## FINAL SUBMISSIONS TO THE COURT

29. At the hearing on 23 March 1992 the Agent of the Government confirmed the submissions in his memorial, inviting the Court to hold that:

"- the complaint alleging a violation of Article 5 para. 1 (art. 5-1) is inadmissible; or at least that there has been no violation of that provision;

- there has been no violation of Article 5 para. 4 (art. 5-4) of the Convention."

The applicant's lawyer, for his part, asked the Court to find a breach of those provisions and to award his client the compensation claimed.

## AS TO THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 5 PARA. 1 (art. 5-1)

30. Mr Kolompar maintained that his deprivation of liberty had not been justified under Article 5 para. 1 (art. 5-1), according to which:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

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\* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 235-C of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

...

(f) the lawful arrest or detention ... of a person against whom action is being taken with a view to ... extradition."

### **A. The objection that the applicant failed to exhaust the domestic remedies**

31. Before the Commission the Government lodged an objection to the complaint on the ground that the applicant had failed to exhaust his domestic remedies. Their objection was divided into two limbs, but in their memorial before the Court (paragraph 5, first sub-paragraph) they stated that they no longer wished to invoke the first of those limbs.

Only the second therefore requires a decision here (see, inter alia, the *Moreira de Azevedo v. Portugal* judgment of 23 October 1990, Series A no. 189, p. 15, para. 60). The Court has jurisdiction to examine it, although the Delegate of the Commission argued to the contrary (see, as the most recent authority, the *Tomasi v. France* judgment of 27 August 1992, Series A no. 241-A, p. 33, para. 77).

32. The Government criticise the applicant for having failed to take to their conclusion the urgent application proceedings instituted by him (see paragraphs 24-25 above). However, as the defendant in those proceedings, the Belgian State had contested the jurisdiction of the President of the Brussels First-Instance Court (above-mentioned memorial, paragraph 5, fourth sub-paragraph); they cannot put to the Court arguments which are inconsistent with the position they adopted before the national courts (see, mutatis mutandis, the *Pine Valley Developments Ltd and Others v. Ireland* judgment of 29 November 1991, Series A no. 222, pp. 21-22, para. 47).

Accordingly, the objection must be dismissed.

### **B. Merits of the complaint**

33. Mr Kolompar considered that his deprivation of liberty was unlawful in two respects: his detention with a view to extradition had served, unlawfully, to ensure that the sentence which he was eventually given by the Belgian courts was executed; in addition, the extradition proceedings had not been conducted at a reasonable pace.

The Government contested these claims; the Commission accepted them.

#### *1. The lawfulness of the detention as such*

34. According to the applicant the detention lasted from 22 May 1984 - four months after 22 January 1984, the date of his arrest - until 25 September 1987. He reasoned that if, in conformity with the statutory provisions and directives in force in Belgium, he had been conditionally

released after having completed a third of his sentence, only about four months of that sentence would have been served.

35. The Government contended that Belgian law did not provide that a foreigner who had been convicted in Belgium and who was the subject of extradition proceedings must be released after completing a third of his sentence. A circular from the Minister of Justice of 23 April 1982 stated merely that the director of the prison, acting on his own initiative, was to make a proposal suggesting a prisoner's provisional release once one third or two thirds, as the case may be, of his sentence had been completed; it in no way derogated from the rules according to which the decision in this matter fell to the Minister, acting on the advice of the prosecuting authority.

The Government maintained further that the contested detention had been covered at first, from 22 January to 11 April 1984, by sub-paragraph (c) of Article 5 para. 1 (art. 5-1-c) of the Convention and then by sub-paragraph (f) (art. 5-1-f); the calculation of the term of one year's imprisonment, subsequently imposed by the Antwerp Court of Appeal, as part of the period spent in the detention on remand and detention pending extradition was a theoretical exercise and changed nothing.

36. The Court notes that in the case before it the detention on remand and the detention pending extradition partly overlapped. Mr Kolompar was arrested on 22 January 1984 (see paragraph 12 above) and the arrest warrant issued by the principal public prosecutor of the Florence Court of Appeal was served on him on 7 March (see paragraph 11 above). On 11 April 1984 the Antwerp investigating judge revoked the order remanding him in custody (see paragraph 12 above). From that date the applicant was detained solely in connection with the extradition proceedings.

However, when the applicant's conviction in Belgium became final on 25 May 1985, the Minister of Justice found that the applicant had already served the prison term which he had received (see paragraph 13 above). Like the Commission, the Court therefore considers that the detention in respect of the offences committed in Belgium lasted from 22 January 1984 to 20 January 1985 and satisfied the requirements of sub-paragraphs (a) and (c) of Article 5 para. 1 (art. 5-1-a, art. 5-1-c). The detention with a view to extradition was in principle justified under sub-paragraph (f) (art. 5-1-f), but as it lasted for over two years and eight months (21 January 1985 to 25 September 1987) it is necessary to determine whether it remained compatible with that provision to the end.

## *2. The length of the contested detention*

37. Mr Kolompar conceded that the proceedings conducted in the committals chamber, the indictments chamber and the Court of Cassation (see paragraphs 21-23 above) had progressed at the required speed. The same was not true, in his opinion, of the urgent application proceedings. The applicant criticised the Belgian State for waiting respectively three months

and five months before filing its submissions at first instance and on appeal. He maintained in addition that he had not sought legal aid (see paragraph 25 above) because there had been absolutely no guarantee that he would have been successful.

38. The Government argued that the time taken to file the submissions in question was not so great that it constituted a violation of human rights on their part. Moreover, the applicant had not availed himself of the possibility of compelling the State to lodge its submissions within a time-limit fixed by a judge (Article 751 of the Judicial Code); he had therefore to be deemed to have consented to an extension of the time-limit fixed by statute (last subparagraph of Article 748 of the same Code). By requesting the Court of Appeal to postpone the hearing of the case (see paragraph 25 above), he had in any event shown that he was not the least interested in the speedy conduct of the proceedings. Furthermore, nothing had prevented the applicant from requesting free legal assistance (Article 455 of the Judicial Code).

Finally, it had been at Mr Kolompar's express request that the Minister of Justice had agreed to stay the execution of the extradition order. The Government had therefore satisfied to the full the applicant's wishes; indeed they had placed themselves in a difficult position in relation to Italy. Their conciliatory approach explained why they had not attempted to speed up the proceedings in the Court of Appeal against the applicant's will. The latter had expected that the period spent in detention pending extradition would be deducted from his prison sentence in Italy; up to September 1987 he had preferred to remain in Belgium rather than be handed over to the Italian authorities.

39. In the Commission's opinion, only the urgent application proceedings were open to criticism. Notwithstanding the applicant's conduct, there had been a problem of inactivity on the part of the State. The limitations on the right guaranteed under Article 5 (art. 5) were to be interpreted strictly. Accordingly, the State should have taken positive measures to expedite the proceedings and thereby shorten Mr Kolompar's detention. As it had not done so, it had not fully satisfied the requirements of Article 5 para. 1 (f) (art. 5-1-f).

40. The Court notes that the period spent in detention pending extradition was unusually long (see paragraph 36 in fine above). However, the extradition proceedings properly so-called were completed by 2 May 1984 (see paragraph 14 above), less than one month after the decision to revoke the order remanding the applicant in custody in respect of his alleged offences in Belgium, at a time when he had not yet been tried in the Antwerp Criminal Court (see paragraph 13 above). The detention was continued as a result of the successive applications for a stay of execution or for release which Mr Kolompar lodged on 29 October 1984, 2 January 1985, 15 June 1985, 21 June 1985 and 17 September 1985 (see paragraphs

15-25 above), as well as the time which the Belgian authorities required to verify the applicant's alibi in Denmark (see paragraphs 17 and 20 above).

41. The authorities and courts before which the case came prior to the beginning, on 17 September 1985, of the urgent application proceedings gave their decisions within a normal time (see paragraphs 15-23 above). To that extent it appears beyond doubt that the requirements of Article 5 para. 1 (f) (art. 5-1-f) were complied with.

42. For the subsequent period (see paragraphs 24-26 above), the Court recognises the force of the Government's arguments based on Articles 751 and 748, last sub-paragraph, of the Belgian Judicial Code (see paragraph 38 above). It notes in addition that, at first instance, Mr Kolompar waited nearly three months before replying to the submissions of the Belgian State (24 December 1985 - 19 March 1986); then, on appeal, he requested that the hearing of the case be postponed and failed to notify the authorities that he was unable to pay a lawyer.

His Netherlands lawyer, when questioned by the Court on these last two points at the hearing on 23 March 1992, stated merely that the request for a postponement had been made on the initiative of a Belgian colleague, who had represented the applicant at the time and that it had not been possible under the Judicial Code in this case to appoint a lawyer to act for him free of charge, although this last affirmation was denied by the Government (see paragraph 38 above).

Whatever the case may be, the Belgian State cannot be held responsible for the delays to which the applicant's conduct gave rise. The latter cannot validly complain of a situation which he largely created.

43. The Court accordingly concludes that there has been no violation of Article 5 para. 1 (art. 5-1).

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

44. According to Mr Kolompar, neither an appeal to the Council of State, nor the proceedings conducted first before the Antwerp investigating organs and then in the Court of Cassation, nor yet the urgent application proceedings in the Brussels First-Instance Court and Court of Appeal, afforded the guarantees laid down in Article 5 para. 4 (art. 5-4), which is worded as follows:

"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."

The Commission subscribed to this view, whereas the Government contested it.

45. The mere fact that the Court has found no breach of the requirements of paragraph 1 of Article 5 (art. 5-1) does not mean that it is dispensed from

carrying out a review of compliance with paragraph 4 (art. 5-4); the two paragraphs are separate provisions and observance of the former does not necessarily entail observance of the latter (see for example the *De Wilde, Ooms and Versyp v. Belgium* judgment of 18 June 1971, Series A no. 12, pp. 39-40, para. 73). Moreover, the Court has consistently stressed the importance of Article 5 para. 4 (art. 5-4), in particular in extradition cases (see the *Sanchez-Reisse v. Switzerland* judgment of 21 October 1986, Series A no. 107, pp. 16-22, paras. 42-61).

46. It should nevertheless be noted that although, in the urgent application proceedings, the applicant contested the lawfulness - which is however not in doubt (see paragraph 41 above) - of his initial detention with a view to extradition, he did not seek to argue, even in the alternative, that the passing of time had rendered his detention unlawful; the Government rightly drew attention to this.

In addition, the extradition request, which constituted the basis for the applicant's custody after 20 January 1985, was not issued in connection with court proceedings which were still pending; it was intended to secure the execution of a sentence imposed in Italy by a decision having final effect. In so far as the length of the deprivation of liberty none the less gives rise to a problem under paragraph 4 of Article 5 (art. 5-4) ("speedily"), it is in this instance a problem which the Court has already dealt with in relation to paragraph 1 (art. 5-1), in having had regard inter alia to the applicant's dilatory conduct. It follows that, for the reasons set out above in relation to paragraph 1 (art. 5-1) (see paragraph 42 above), the Court cannot find a violation of Article 5 para. 4 (art. 5-4) in this instance.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary objection;
2. Holds that there has been no violation of paragraphs 1 and 4 of Article 5 (art. 5-1, art. 5-4).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 24 September 1992.

Rolv RYSSDAL  
President

Marc-André EISSEN  
Registrar