



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

COURT (CHAMBER)

CASE OF LAMY v. BELGIUM

(Application no. 10444/83)

JUDGMENT

STRASBOURG

30 March 1989

In the Lamy case*,

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

Mr R. RYSSDAL, *President*,
Mr J. CREMONA,
Mr Thór VILHJÁLMSSON,
Mr L.-E. PETTITI,
Mr C. RUSSO,
Mr J. DE MEYER,
Mr J.A. CARRILLO SALCEDO,

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

Having deliberated in private on 25 November 1988 and 24 February 1989,

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 18 December 1987, 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. 10444/83) against the Kingdom of Belgium lodged with the Commission under Article 25 (art. 25) by a Belgian national, Mr José Lamy, on 20 June 1983.

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 from the Court as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 5 paras. 2 to 4 and Article 6 para. 3 (b) (art. 5-2, art. 5-3, art. 5-4, art. 6-3-b).

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

* Note by the Registrar: The case is numbered 16/1987/139/193. 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.

the proceedings pending before the Court 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 29 January 1988, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr J. Cremona, Mr Thór Vilhjálmsson, Mr L.-E. Pettiti, Mr C. Russo and Mr J.A. Carrillo Salcedo (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Government, the Delegate of the Commission and the lawyer for the applicant on the need for a written procedure (Rule 37 para. 1). In accordance with the orders made in consequence, the Registrar received:

- (a) the applicant's memorial, on 5 April 1988;
- (b) the Government's memorial, on 25 April; and
- (c) the Government's and the applicant's supplementary memorials, on 22 July and 1 August respectively.

In letters received by the Registrar on 27 May and 25 August, the Secretary to the Commission indicated that the Delegate would submit his observations at the hearing.

5. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 8 September that the oral proceedings should open on 23 November 1988 (Rule 38).

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

There appeared before the Court:

- for the Government

Mr J. LATHOUWERS, Ministry of Justice, *Delegate of the Agent,*

Mr E. JAKHIAN, leader

of the Brussels Bar, *Counsel;*

- for the Commission

Mr A. WEITZEL, *Delegate;*

- for the applicant

Mr R. NEUROTH, avocat, *Counsel.*

The Court heard addresses by Mr Jakhian for the Government, by Mr Weitzel for the Commission and by Mr Neuroth for the applicant.

7. Although, on the President's instructions, the applicant was requested by the Registrar on 22 December 1985 to "provide particulars, with vouchers, of expenses incurred ... before the Belgian courts and the Convention institutions", he did not do so before this judgment was adopted.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. Mr José Lamy is a Belgian citizen who was born in 1932; he lives at Verviers and is a company director.

On 29 November 1982, a private limited company ("société de personnes à responsabilité limitée - "SPRL Lamy") of which he was the manager and which built industrial premises filed a declaration of insolvency with the registry of the Verviers Commercial Court, and the court adjudged the company bankrupt on the same day.

A. The applicant's remand in custody

1. The arrest warrant

9. On 18 February 1983, an investigating judge of the Verviers tribunal de première instance (regional court of first instance) questioned Mr Lamy and issued a warrant for his arrest.

The warrant set out several grounds: the seriousness of the offences and of the adverse effects on public order and safety; the scale of the bankrupt company's liabilities (more than 500 million BF); the needs of the investigation; the accused's deliberate and unmistakable attempts to deprive the creditors of their security; his expenditure; and the risk of his absconding abroad.

On the back of the warrant the charges listed against the applicant were:

"I. That, being the majority partner in SPRL Lamy at Ensival-Verviers, which was adjudged bankrupt by the Verviers Commercial Court on 29.11.1982, and himself a trader adjudged personally bankrupt by the same court on 30.12.1982, he did at Verviers, Pepinster or elsewhere in the district or Kingdom, within the limitation period, commit:

(a) ... fraudulent bankruptcy by, among other things:

1. misappropriating or concealing assets worth over 10,000,000 F; and
2. withholding his books or other accounting documents or fraudulently removing, deleting or altering their content;

(b) ... ordinary bankruptcy by, among other things:

1. incurring excessive personal and household expenditure;
2. not giving notice of cessation of payments within the time-limit prescribed in Article 440 of the Commercial Code;

3. failing, in the late notice, to give the explanations and accurate information required by Article 441 of the Commercial Code;

4. paying or favouring some creditors to the detriment of the creditors as a whole, after cessation of payments.

II. That as principal, joint principal or accessory, at Verviers or elsewhere in the Kingdom between 1.1.1980 and this day, he did on several occasions fraudulently or maliciously:

(a) forge notarised and public documents, private documents and bank or commercial documents by means of false signatures, or by forging or altering documents or signatures, or by fabricating or inserting terms, provisions, obligations or discharges in documents, or by adding or altering clauses, statements or facts which it was the purpose of the documents to set out and record, in that he inter alia:

(i) submitted a false balance sheet on 29.11.1982;

(ii) kept a separate set of false accounts of his business with Algeria and Libya among others;

(b) use these documents knowing them to be false;

(c) fraudulently misappropriate or, to the detriment of another, part with bills of exchange, money, merchandise, promissory notes, receipts or documents which he had been given on condition he returned them or used them for specific purposes, in particular:

(i) 789,000 F due in VAT and,

(ii) over 10,000,000 F to the detriment of SPRL Lamy (sale of civil-engineering equipment);

(d) obtain, in order to appropriate property of another, funds, movables, obligations, receipts or discharges, by using assumed names or false status or making other false pretences to induce belief in the existence of fictitious businesses, powers or credit, engender hope or apprehension of success, or otherwise deceive in order more particularly to:

(i) obtain 1,801,429 F from the VAT authority to the detriment of SPRL Lamy.

III. That at Verviers or elsewhere in the Kingdom between 14 January 1974 and this day, being a trader, he did carry on a professional activity for which he was not registered in the Business Register."

After receiving a copy of the warrant, Mr Lamy was taken into custody at the remand prison at Verviers.

2. Proceedings in the chambre du conseil of the Verviers tribunal de première instance

10. On 22 February 1983, the applicant, assisted by his lawyer, appeared before the chambre du conseil of the Verviers tribunal de première instance. His counsel filed pleadings in which he disputed in particular that there were "serious and exceptional circumstances" within the meaning of section 2 of the Act of 10 April 1874 (see paragraph 23 below). He also handed over a file concerning, inter alia, the proceedings relating to the applicant's personal bankruptcy (see paragraph 17 below).

11. After hearing the investigating judge, Assistant Crown Counsel and the defence, the chambre du conseil upheld the arrest warrant. It accepted the reasons given in the warrant and held that the interests of public safety required that the applicant should continue to be held in custody.

3. The proceedings in the Indictments Chamber of the Liège Court of Appeal

12. On 23 February 1983, Mr Lamy challenged the chambre du conseil's order in the Indictments Chamber of the Liège Court of Appeal. He argued that no reasons were given for the order, the circumstances noted by the chambre du conseil were not such as to justify his detention, and the warrant of 18 February was unlawful as it did not bear any signature and was wrongly dated (18 March 1983).

The prosecution filed pleadings on 28 February 1983.

13. On 10 March 1983, the Indictments Chamber set aside the order on grounds of failure to reply to the applicant's submissions. At the same time, however, it decided that the arrest warrant should remain in force.

As regards whether there was sufficient evidence of guilt and of serious and exceptional circumstances relating to public safety, the Indictments Chamber founded its judgment on the following reasons:

"It is to be noted that even in his own account of the state of the firm's affairs, given in the form of submissions, the accused conceded that the balance sheet of 29 November 1982 was inaccurate, although he denied any fraudulent intent and stated that after verification of sums owed to the firm its liabilities came to 220 million francs, against which he set primarily the expected outcome of a hypothetical action against a third party, whose value he said could 'reasonably' be put at 300 million francs;

Account must be taken of his admissions concerning the irregular transactions referred to in report 317 of the Verviers police and in the record of his examination by the investigating judge on 18 February 1983, corroborated by the admissions of the co-accused Jungbluth, in police report 292, although the accused now denies their extent;

The foregoing provides sufficient evidence of guilt to justify the impugned arrest warrant, given the extremely large sums involved, the needs of the investigation, which the accused disputed to no avail, and the risk of his attempting to evade justice

despite his protestations of good faith and the good intentions he professes - all considerations which are set out in the warrant appealed against, which are serious and exceptional, and which required his arrest in the interests of public safety."

As to the alleged unlawfulness of the warrant, the Indictments Chamber noted, in the first place, that the copy given to the applicant mentioned that the original identified the investigating judge and was signed by him. The court added: "It [could] not be seriously questioned ... that the copy given to the [applicant] bore the date 18 March 1983 instead of 18 February 1983 purely as a result of a clerical error of no consequence". The court concluded that these circumstances in no way made the arrest arbitrary and could not have prejudiced the rights of the defence.

4. The proceedings in the Court of Cassation

14. Mr Lamy appealed on points of law to the Court of Cassation on 11 March 1983, putting forward three grounds. Firstly, he maintained that mandatory formal requirements had not been complied with, as the arrest warrant was unsigned and the attached order committing him to prison bore the date 18 March 1983. Additionally, he considered the reasoning of the Indictments Chamber's judgment to be unclear and contradictory. Lastly, he stated that the Indictments Chamber had relied on reports 292 and 317 of the Verviers police - documents that had not been communicated to the accused; in this connection he relied on Article 6 paras. 1 and 3 (art. 6-1, art. 6-3) of the Convention.

15. The Court of Cassation dismissed the appeal on 4 May 1983.

As regards the first ground of appeal, it noted that the formalities provided for in the Code of Criminal Procedure for serving an arrest warrant were not mandatory and that failure to comply with them did not entail nullity. It reiterated the Indictments Chamber's remarks as to the lack of a signature and the error in the date and concluded that there had been no infringement of the rights of the defence or of the principle of personal liberty.

With respect to the second ground of appeal, the Court of Cassation held that the reasons given for the judgment appealed against were neither unclear nor contradictory, as the judgment was based not only on the applicant's admissions concerning the irregular transactions referred to in reports 292 and 317 but also on the extremely large sums involved, the needs of the investigation and the risk that the accused might try to evade justice. The Indictments Chamber inferred from this that there were serious and exceptional circumstances affecting public safety.

As to the third ground, the Court of Cassation held that Article 6 (art. 6) of the Convention was concerned with the exercise of the rights of the defence in trial courts and not with procedure followed in the matter of detention on remand. Furthermore, the 1874 Act precluded communication of the file to the accused or his counsel at this stage in the proceedings; this

was apparent from section 4, taken together with the final paragraph of section 5. The Indictments Chamber had accordingly not been able to "conclude from the non-communication of the file that there had been any infringement of the rights of the defence".

5. Provisional release

16. The chambre du conseil made reasoned orders extending Mr Lamy's detention on remand month by month (section 5, second paragraph, of the 1874 Act - see paragraph 23 below). The applicant regained his freedom on 18 August 1983 as the vacation court, exercising the jurisdiction of the Indictments Chamber, took the view that the needs of the investigation no longer precluded his release.

B. The proceedings against the applicant

1. Civil proceedings

17. On 24 December 1982, on an application by the trustees in bankruptcy for SPRL Lamy, the Verviers Commercial Court adjudged the applicant personally bankrupt.

An application by Mr Lamy to have that judgment set aside was dismissed by the Commercial Court on 24 March 1983, but on appeal the Liège Court of Appeal, in a judgment delivered on 24 April 1985, quashed the judgment of 24 March 1983 and declared the judgment of 24 December 1982 to be null and void.

2. Criminal proceedings

(a) The committal for trial

18. On 28 March 1986, the chambre du conseil of the Verviers tribunal de première instance committed Mr Lamy and five co-defendants for trial at the Criminal Court.

19. An application by Mr Lamy to have that order set aside was declared inadmissible by the Indictments Chamber in a judgment given on 10 December 1986.

20. Mr Lamy's appeal on points of law against that judgment was dismissed by the Court of Cassation on 4 February 1987.

21. Throughout the proceedings relating to the committal for trial, the applicant pleaded various grounds of nullity. He argued in particular that his counsel had not been able to inspect the file when the arrest warrant was first confirmed by the chambre du conseil and had subsequently had only forty-eight hours' notice of each appearance, which was not sufficient for preparing the defence.

(b) The judgment of the Verviers Criminal Court

22. On 12 November 1987, the Verviers Criminal Court convicted the defendant and sentenced him to three years' imprisonment, suspended for five years in respect of that part of the sentence which exceeded the time already spent in custody on remand, and imposed two fines of 60,000 BF.

Unlike his co-defendants, Mr Lamy did not appeal.

II. THE APPLICABLE DOMESTIC LAW

23. Detention on remand is governed by an Act of 20 April 1874, as amended or supplemented by, inter alia, Acts of 23 August 1919 and 13 March 1973. The main provisions relevant in the instant case are set out below:

Section 1

"After the examination, the investigating judge may issue an arrest warrant where the offence is punishable by three months' imprisonment or a heavier penalty.

If the accused is resident in Belgium, the investigating judge may issue such a warrant only in serious and exceptional circumstances, where necessary in the interests of public safety.

..."

Section 2

"In the eventuality provided for in paragraph 2 of section 1, the warrant shall state the serious and exceptional circumstances affecting public safety which justify arrest and shall specify the special features of the case or of the accused's personality."

Section 3

"Immediately after the first interview with the investigating judge, the accused shall be allowed to communicate freely with his counsel.

..."

Section 4

"The arrest warrant shall expire unless, within the five days following the examination, the chambre du conseil renews it on the basis of the investigating judge's report and after hearing submissions by Crown Counsel and the accused.

If the accused, who shall be asked specifically about his wishes in the matter, desires the assistance of a lawyer, that fact shall be mentioned in the record of his examination by the investigating judge.

In that event, the presiding judge of the chambre du conseil dealing with the case shall cause the place, date and time of the hearing to be entered in a special register at the registry at least forty-eight hours beforehand.

The registrar shall notify these details by registered letter to the lawyer nominated."

Section 5

"If, within one month after the examination by the investigating judge, the chambre du conseil has not given a ruling on the remand, the accused shall be released unless, in a unanimous reasoned decision, after hearing submissions by Crown Counsel and the accused or his lawyer, the chambre du conseil rules that serious and exceptional circumstances affecting public safety necessitate the accused's further remand. Such a decision shall state the relevant circumstances and the special features of the case or of the accused's personality.

The same shall apply each month thereafter if the chambre du conseil has not ruled on the remand by the end of the month.

Prior to a hearing by the chambre du conseil or the Indictments Chamber, the file shall be made available to the accused's lawyer at the registry for two days. The registrar shall notify the lawyer accordingly by registered letter."

Section 19

"The accused and the prosecution may appeal to the Indictments Chamber against decisions of the chambre du conseil in the cases provided for in sections 4, 5...."

Section 20

"Such an appeal shall be entered within the twenty-four hours following the day of the decision in the case of the prosecution and following the day on which the decision was served on him in the case of the accused.

Service shall be effected within twenty-four hours. The relevant document shall advise the accused of his right of appeal and of the time-limit for exercising that right.

Notice of appeal shall be lodged with the registry of the Criminal Court and recorded in the register of criminal appeals.

Crown Counsel shall forward the documents to Principal Crown Counsel.

Notifications to the accused's lawyer shall be made by the Registrar.

The Indictments Chamber shall give a ruling straightaway after hearing submissions by the prosecution and the accused or his lawyer.

..."

24. It should be noted that section 4 does not contain any provision corresponding to the last paragraph of section 5, which was inserted by the Act of 23 August 1919.

PROCEEDINGS BEFORE THE COMMISSION

25. In his application of 20 June 1983 to the Commission (no. 10444/83), Mr Lamy complained that neither he nor his counsel had had access to the investigation file when the arrest warrant was first confirmed by the chambre du conseil of the Verviers tribunal de première instance or when he appealed to the Indictments Chamber of the Liège Court of Appeal. He alleged a violation of Article 5 paras. 2, 3 and 4 of the Convention and of Article 6 para. 3 (b) (art. 5-2, art. 5-3, art. 5-4, art. 6-3-b).

26. The Commission declared the application admissible on 10 December 1985. In its report of 8 October 1987 (made under Article 31) (art. 31), it expressed the opinion that:

(a) there had been a violation of Article 5 para. 4 (art. 5-4) (by seven votes to three);

(b) it was not necessary to express a view on whether there had been a violation of Article 5 paras. 2 and 3 (art. 5-2, art. 5-3) (unanimously); and

(c) there had not been a violation of Article 6 para. 3 (b) (art. 6-3-b) (unanimously).

The full text of the Commission's opinion and of the separate opinion contained in the report is reproduced as an annex to this judgment.

AS TO THE LAW

I. THE ALLEGED VIOLATION OF ARTICLE 5 PARA. 4 (art. 5-4)

27. The applicant claimed to be a victim of a breach of Article 5 para. 4 (art. 5-4) of the Convention, which provides:

"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."

In his submission, a review of the lawfulness of his detention should have been the occasion for objective, adversarial proceedings. These could not be considered to have taken place where the investigating judge and Crown Counsel had had an opportunity to make their submissions in full

knowledge of the contents of a substantial file, while the defence could only argue its case on the vague charges made in the arrest warrant.

Furthermore, the proceedings allegedly did not truly ensure equality of arms. After a brief interview with the investigating judge, who read the charges out to him, Mr Lamy received a copy of the warrant, which was unsigned and bore the wrong date. During the first thirty days during which he was held in custody, he was not allowed access to the investigation file; subsequently, his counsel - but not he himself - had access to it but only during the forty-eight hours preceding each appearance before the *chambre du conseil*.

Lastly, the applicant claimed that the *chambre du conseil* had taken no account of his submissions. He made the same criticism of the Indictments Chamber, which he said had taken refuge in stereotyped phrases. It had based its confirmation of the arrest warrant on his "confessions" and on police reports 292 and 317. The confessions, however, were non-existent and the police reports did not demonstrate guilt, especially as Mr Lamy could not know the content of them from the mere mention of the numbers. While admitting that he had drafted two sets of pleadings, running to seven pages and twenty-two pages, the applicant complained that he had not been able to prepare his defence adequately and that he was not allowed to inspect the police reports in question.

28. In the Government's submission, the reason why the file on a case remained inaccessible to the defence during the first thirty days of custody was that the investigating judge would only just have opened it and would be adding new material to it every day (seized documents, records of witness examinations, searches, expert evidence, etc.); he could not part with it for the purposes of its being held permanently at the registry and being made available to the defendant or his counsel.

Apart from that aspect, Mr Lamy had had the benefit of adversarial proceedings in accordance with the criteria laid down by the European Court, notably in the *Sanchez-Reisse* judgment of 21 October 1986 (Series A no. 107) and the *Weeks* judgment of 2 March 1987 (Series A no. 114).

In the first place, he had been notified of the evidence against him. After his interview of 18 February 1983 with the investigating judge, he had received on the same day a copy of the arrest warrant, which set out at length the reasons why it had been issued. When he first appeared before the *chambre du conseil* he had heard the investigating judge's report and the prosecution's submissions. He had been fully informed of the content of police reports 292 and 317, which he had moreover helped to draw up.

In the second place, Mr Lamy had been able to participate adequately in the judicial process. He or his counsel had set forth the arguments in favour of his release, both orally and in writing. He had filed two sets of pleadings running to seven pages and twenty-two pages, and the Belgian courts duly ruled on them as they were bound to do, since otherwise their judgments

could have been reversed or quashed on appeal. He had been present when the arrest warrant was renewed. And when his lawyer, at the end of the first month of custody, had had access to the whole file, he had not derived any fresh argument from it.

More generally, the Government maintained that the overriding need for proceedings to be adversarial did not extend to making available the entire file that was being built up and that the requirements of Article 6 (art. 6) were not identical with the more limited ones of Article 5 para. 4 (art. 5-4). For the Court to hold that the principle of equality of arms applied also to the consideration of applications for provisional release would be tantamount to condemning the system brought into operation by the legislation complained of and by that of other Contracting States, when what was at issue was a corollary of the fact that the investigation was inquisitorial and secret. Belgium would find itself faced with two alternatives: either maintaining the present waiting time for appearance before the *chambre du conseil*, which would mean photocopying all the documents and would be impossible in practice; or prolonging the waiting period so that the file could be lodged at the registry.

29. Like the Commission, the Court notes that during the first thirty days of custody the applicant's counsel was, in accordance with the law as judicially interpreted, unable to inspect anything in the file, and in particular the reports made by the investigating judge and the Verviers police. This applied especially on the occasion of the applicant's first appearance before the *chambre du conseil*, which had to rule on the confirmation of the arrest warrant (see paragraphs 10-11 above). The applicant's counsel did not have the opportunity of effectively challenging the statements or views which the prosecution based on these documents.

Access to these documents was essential for the applicant at this crucial stage in the proceedings, when the court had to decide whether to remand him in custody or to release him. Such access would, in particular, have enabled counsel for Mr Lamy to address the court on the matter of the co-defendants' statements and attitude (see paragraph 18 above). In the Court's view, it was therefore essential to inspect the documents in question in order to challenge the lawfulness of the arrest warrant effectively.

The appraisal of the need for a remand in custody and the subsequent assessment of guilt are too closely linked for access to documents to be refused in the former case when the law requires it in the latter case.

Whereas Crown Counsel was familiar with the whole file, the procedure did not afford the applicant an opportunity of challenging appropriately the reasons relied upon to justify a remand in custody. Since it failed to ensure equality of arms, the procedure was not truly adversarial (see, *mutatis mutandis*, the Sanchez-Reisse judgment previously cited, Series A no. 107, p. 19, para. 51).

There was therefore a breach of Article 5 para. 4 (art. 5-4).

II. THE ALLEGED VIOLATION OF ARTICLE 5 PARA. 2 (art. 5-2)

30. The applicant also alleged a violation of Article 5 para. 2 (art. 5-2), which provides:

"Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

Mr Lamy claimed that the judicial investigation had begun as a result of a tendentious report by the administrators of SPRL Lamy of which he had had no knowledge. That being so, he could not effectively and usefully prepare his defence and make ready for his appearance before the chambre du conseil.

31. The Government submitted that Article 5 para. 2 (art. 5-2) covered only the information to be given a defendant about the charges against him.

The influence of such information on the conduct of the defence was an aspect of Article 5 para. 4 (art. 5-4) and was to be looked at from the point of view of that provision.

As to the way in which the information was to be given, it was clear from the case-law of the Convention institutions that it could be given orally or in writing. There was accordingly no obligation to make the file available for inspection. Furthermore, the record of the hearing on 18 February 1983 showed that Mr Lamy had admitted some of the charges. Since he had signed that document and received a copy of the arrest warrant, he could not claim not to have known the reasons for his arrest. The interview with the investigating judge had therefore amply satisfied the requirements of Article 5 para. 2 (art. 5-2).

32. The Court considers the applicant's arguments to be devoid of foundation. Quite apart from his questioning by the investigating judge, it notes that on the very day of his arrest Mr Lamy was given a copy of the arrest warrant. This document set out not only the reasons for depriving him of his liberty but also the particulars of the charges against him (see paragraph 9 above). There was accordingly no breach of Article 5 para. 2 (art. 5-2).

III. THE ALLEGED VIOLATION OF ARTICLE 5 PARA. 3 (art. 5-3)

33. The applicant further complained of an infringement of Article 5 para. 3 (art. 5-3), whereby:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) (art. 5-1-c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

In his view, that provision implied proceedings that were meaningful. Yet neither the chambre du conseil nor the Indictments Chamber had taken account of his submissions to them.

34. The Government disputed that claim. They said that the Convention, and in particular Article 5 para. 3 (art. 5-3), did not contain any obligation to rule on a defendant's submissions or, more generally, to give reasons for a judgment. They also pointed out that the Indictments Chamber had set aside the chambre du conseil's order for failure to rule on Mr Lamy's submissions. The applicant had thus successfully availed himself of the remedy that Belgian law and the Belgian courts afforded him, and he therefore had no reason to rely on Article 5 para. 3 (art. 5-3).

35. The Court notes that the investigating judge at Verviers issued a warrant - containing reasons - for Mr Lamy's arrest on the very day that he had questioned him, and that the chambre du conseil upheld the arrest and likewise gave reasons for its successive orders (see paragraphs 9, 16 and 32 above).

It should also be noted that the detention on remand ended well before committal for trial and the subsequent conviction.

The procedure therefore complied with the requirements of Article 5 para. 3 (art. 5-3).

IV. THE ALLEGED VIOLATION OF ARTICLE 6 PARA. 3 (b) (art. 6-3-b)

36. Lastly, Mr Lamy complained of a breach of Article 6 para. 3 (b) (art. 6-3-b), which confers on "everyone charged with a criminal offence" the right "to have adequate time and facilities for the preparation of his defence".

37. The facts and arguments relied on by the applicant in support of this complaint are the same as those put forward under Article 5 para. 4 (art. 5-4). It is accordingly not necessary to consider the case under Article 6 para. 3 (b) (art. 6-3-b) and in particular to determine the question - on which there was lengthy argument between those appearing before the Court - of the applicability of this provision to the investigation stage of proceedings.

V. THE APPLICATION OF ARTICLE 50 (art. 50)

38. The applicant relied on Article 50 (art. 50) of the Convention, which reads:

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

measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

He sought satisfaction for damage and for costs and expenses.

A. Damage

39. As Mr Lamy considered that the question of compensation was not ready for decision, he asked the Court to reserve it. He proceeded on the assumption that the Court would find that there had been a violation of the Convention and that its judgment would prompt the Minister of Justice to ask Principal Crown Counsel at the Court of Cassation to refer to that court the Verviers Criminal Court's judgment of 12 November 1987 (see paragraph 22 above).

40. The Government considered that the applicant's claim for 10 million Belgian francs in the pleadings he had filed with the Commission was premature.

41. The Delegate of the Commission noted that there was no evidence to warrant the assertion that the detention on remand complained of would probably have ended earlier if Mr Lamy had been able to inspect the file - particularly police reports 292 and 317 - before the hearing by the Verviers chambre du conseil on 22 February 1983. He concluded that the violation of Article 5 para. 4 (art. 5-4) had not caused the applicant any pecuniary damage. On the other hand, he considered that Mr Lamy might have sustained non-pecuniary damage, to be assessed *ex aequo et bono*.

42. The Court regards the question as being ready for decision.

As far as pecuniary damage is concerned, it agrees with the Delegate of the Commission. It points out that Mr Lamy's conviction by the Verviers Criminal Court is not in issue in the instant case. Furthermore, it sees no causal link between the breach of Article 5 para. 4 (art. 5-4) and any worsening of Mr Lamy's financial position.

If Mr Lamy did suffer any non-pecuniary damage, the present judgment provides him with sufficient just satisfaction (see in particular, *mutatis mutandis*, the Luberti judgment of 23 February 1984, Series A no. 75, pp. 18-19, para. 41).

B. Costs and expenses

43. At the hearing the applicant claimed 300,000 BF "on a provisional basis in respect of costs in the Belgian courts and before the Convention institutions". Despite a request by the President of the Court (see paragraph 7 above), the applicant has not since provided the necessary particulars of the costs he incurred.

That being so, the Court cannot award him more than 100,000 BF under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a breach of Article 5 para. 4 (art. 5-4) of the Convention;
2. Holds that there has been no breach of Article 5 paras. 2 and 3 (art. 5-2, art. 5-3);
3. Holds that it is not necessary to examine the case under Article 6 para. 3 (b) (art. 6-3-b);
4. Holds that Belgium is to pay the applicant 100,000 (one hundred thousand) BF in respect of costs and expenses;
5. Rejects the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 30 March 1989.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar