

In the case of Jamil v. France (1),

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

Mr R. Ryssdal, President,
 Mr L.-E. Pettiti,
 Mr R. Macdonald,
 Mrs E. Palm,
 Mr A.N. Loizou,
 Mr A.B. Baka,
 Mr M.A. Lopes Rocha,
 Mr G. Mifsud Bonnici,
 Mr P. Jambrek,

and also of Mr H. Petzold, Registrar,

Having deliberated in private on 27 January and 25 May 1995,

Delivers the following judgment, which was adopted on the last-mentioned date:

Notes by the Registrar

1. The case is numbered 11/1994/458/539. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 13 April 1994, 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. 15917/89) against the French Republic lodged with the Commission under Article 25 (art. 25) by a Brazilian national, Mr Abdallah Jamil, on 13 November 1989.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 7 (art. 7) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, 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 L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 26 April 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Macdonald, Mr N. Valticos, Mrs E. Palm, Mr A.N. Loizou, Mr A.B. Baka, Mr M.A. Lopes Rocha and Mr G. Mifsud Bonnici (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr P. Jambrek, substitute judge, replaced Mr Valticos, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the French Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's and the Government's memorials on 14 and 26 September 1994 respectively. On 11 October 1994 the Secretary to the Commission informed the Registrar that the Delegate of the Commission would submit his observations at the hearing.

5. On 25 November 1994 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 23 January 1995. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Miss M. Picard, magistrat, on secondment to the Department of Legal Affairs, Ministry of Foreign Affairs,	Agent,
Mrs R. Codevelle, Inspector of Customs, Department of Customs and Indirect Taxes, Ministry of the Budget,	
Mr X. Samuel, magistrat, on secondment to the Department of Criminal Affairs and Pardons, Ministry of Justice,	
Mrs M. Dubrocard, magistrat, on secondment to the Department of Legal Affairs, Ministry of Foreign Affairs,	Advisers;

(b) for the Commission

Mr J.-C. Soyer,	Delegate;
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(c) for the applicant

Mr X. Lécussan, avocat,	Counsel.
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The Court heard addresses by Mr Soyer, Mr Lécussan and Miss Picard. The Government filed various documents at the hearing.

AS TO THE FACTS

I. Circumstances of the case

7. Mr Abdallah Jamil, a Brazilian national, was formerly a photographer and lived in Marseilles.

8. On 4 June 1986 customs officers arrested him at Roissy-Charles de Gaulle Airport, Paris, as he and another person were about to collect a package containing 2,614 grams of cocaine.

9. Mr Jamil was charged with smuggling prohibited goods and conspiracy to smuggle prohibited goods, the fact that he was a foreign national being mentioned on the charge sheet. On 9 June 1986 he was placed in pre-trial detention.

10. On 22 June 1987 the Bobigny Criminal Court sentenced him to eight years' imprisonment and ordered that he should subsequently be deported and permanently excluded from French territory. The court also ordered confiscation of the goods seized and sentenced the defendants to pay a fine, with imprisonment in default, to the customs, which was a co-prosecutor and had also joined the proceedings as a civil party. The customs fine, of 2,091,200 French francs (FRF), was equivalent to the value of the imported drugs, determined by the court as being FRF 800 per gram (Article 414 of the Customs Code - see paragraph 18 below). The court ordered that the detention of both convicted offenders should continue until the whole of the fine had been paid, up to the maximum term of imprisonment in default, which was four months (Article 750 of the Code of Criminal Procedure ("CCP") - see paragraph 17 below).

11. The applicant, the public prosecutor and the customs appealed and the Paris Court of Appeal gave its decision on 5 May 1988. It upheld the sentences imposed by the court below and, at the request of the customs authorities, specified that imprisonment in the event of default would be subject to the conditions recently laid down in Article L. 627-6, second paragraph, of the Public Health Code (see paragraph 19 below). This provision had been inserted by Law no. 87-1157 of 31 December 1987 on the prevention of drug trafficking (published in the Official Gazette (Journal officiel) of 5 January 1988), that is to say after the offence had been committed; it increased the maximum term of imprisonment in default to two years where fines and other pecuniary penalties exceeded FRF 500,000.

12. Mr Jamil lodged an appeal on points of law, alleging in particular a violation of Article 7 (art. 7) of the Convention (see paragraph 25 below) and infringement of the principle that offences and penalties must be defined by law, in that, as imprisonment in default was a custodial penalty of a punitive nature, the Law of 31 December 1987, which had made the provisions governing it more severe, could be applied only to offences committed after it had come into force.

The Court of Cassation dismissed the appeal in a judgment of 18 July 1989. In respect of this ground of appeal it held as follows:

"In so deciding, the Court of Appeal applied the law correctly. Imprisonment in default is indeed a means of enforcement, not a penalty, and procedural provisions such as those relating to enforcement of penalties are applicable immediately to situations that already existed when the provisions came into force;"

13. Mr Jamil was released on 22 April 1992 after serving the sentence imposed under the ordinary criminal law.

He did not serve any period of imprisonment under the warrant of committal for default, as the Bobigny public prosecutor had rescinded it on 20 March 1992 at the request of the customs authorities after the sum of FRF 6,000 had been paid by the applicant.

II. Relevant domestic law and practice

A. Customs fines

14. Like fiscal fines, customs fines have always been regarded as hybrid measures, with elements of both compensation and punishment.

As damages, such fines can be reduced by the customs authorities. The latter estimate the value of the contraband goods and give this figure to the court, which, for the calculation of the base figure for the fine, may not substitute its own assessment without ordering an independent expert opinion. In a judgment delivered on 24 October 1994 the Court of Cassation pointed out that customs fines partook of the nature of damages. Only one fine may be imposed for each offence, but pecuniary penalties are aggregated and are governed by the same rules on limitation as damages. The customs authorities' power to compound made it possible to set penalties at a level reflecting the seriousness of the offence at a time when the courts had no discretion to vary the fine prescribed by law. This power has survived despite the introduction of the practice of taking mitigating circumstances into account.

Customs fines are also similar to criminal penalties. Only the courts are empowered to impose them, after determining their amount within the limits allowed by law. They are payable only by the offender personally, are covered by the rules concerning reoffending and are entered in the offender's criminal record. Liability is incurred by mere commission of the offence, so that customs fines may be imposed even where there has been no loss to the public purse. Failure to pay renders the offender liable to imprisonment.

B. Imprisonment in default

1. General principles

15. Imprisonment in default is an invention of Roman law originally designed to guarantee execution of a court order to pay a sum of money either to the State or to a private individual. It consists in detaining the recalcitrant debtor in a short-stay prison, where he is not obliged to work. It is not an alternative to payment, as the convicted person is still liable to pay the sum due (Article 762 CCP - see paragraph 17 below), but it may not be imposed a second time for the same debt. Its scope has gradually been whittled away since the nineteenth century, when it was seen as a real means of punishment available to creditors, who could apply to have insolvent civil debtors committed to prison. It was permanently abolished in civil and commercial proceedings by the Law of 22 July 1867, surviving in respect of debts to the Treasury only (Article 749 CCP - see paragraph 17 below), and the rules governing its enforcement have become more lenient (imprisonment of an insolvent debtor is prohibited under Article 752 of the CCP - see paragraph 17 below).

Imprisonment in default now serves to guarantee recovery of debts to the State, such as pecuniary penalties (with the exception of those imposed for political or press offences) or any other payment to the Treasury not in the nature of civil damages.

It is governed in many respects by the same principles as execution of sentence: it cannot be executed once the time-limit for enforcing sentence has expired; in extradition cases (Law of 10 March 1927) and for the purposes of rehabilitation (Articles 784 and 788 CCP) its execution is deemed the equivalent of payment; and the criminal-law principles that sentences must be adapted to the individual and that consecutive sentences must not be imposed apply.

In spite of these aspects, imprisonment in default is regarded not as a form of imprisonment in lieu of payment but as a guarantee of enforcement directed at the debtor's person. On 4 January 1995, on an appeal on points of law by an offender sentenced to pay three fines of FRF 300 each for contravening a département health regulation on manure tipping, the Court of Cassation pointed out: "imprisonment in default is not a penalty. It is a means of enforcement automatically attached to any pecuniary order made by a criminal court and satisfies the requirements of both Article 5 [para. 1] (b) (art. 5-1-b) of the Convention ... and Article 2 of Protocol No. 4" (P4-2). Thus the laws that govern imprisonment in default are applicable immediately, even to situations which arose before they came into force, and time spent in pre-trial detention is not set off against the term of imprisonment in default.

When a criminal court orders imprisonment in default, it does not have power to vary its duration, which is laid down by law (Articles 749 and 750 of the CCP - see paragraph 17 below; Court of Cassation, Criminal Division, 25 July 1991, *Juris-Classeur périodique* 1991, IV, 383). In certain circumstances, as an exception to the ordinary law, the customs authorities can obtain enforcement of a warrant of committal for default before it becomes final (Article 382 of the Customs Code - see paragraph 18 below).

2. Relevant provisions

16. Three different codes are relevant to this case.

(a) The Code of Criminal Procedure

17. The Code of Criminal Procedure provides as follows:

Article 749

"Where an order to pay a fine or court costs or to pay the Treasury any other sum not in the nature of civil damages is made in respect of an offence which is not political and does not attract a sentence of life imprisonment, the length of imprisonment in default applicable in the event of failure to comply shall be as laid down in Article 750.

Where appropriate, the length shall be determined according to the total amount of debt outstanding."

The reference to court costs was deleted by Law no. 93-2 of 4 January 1993.

Article 750

"The length of imprisonment in default shall be

1. five days where the fine and the sums whose payment has been ordered amount to at least 1,000 francs but do not exceed 3,000 francs;
2. ten days where they amount to more than 3,000 francs but not more than 10,000 francs;
3. twenty days where they amount to more than 10,000 francs but not more than 20,000 francs;
4. one month where they amount to more than 20,000 francs but not more than 40,000 francs;

5. two months where they amount to more than 40,000 francs but not more than 80,000 francs;
6. four months where they exceed 80,000 francs."

Article 752

"Imprisonment in default may not be enforced in respect of convicted persons who prove that they are insolvent ..."

Article 758

"A sentence of imprisonment in default shall be served in a short-stay prison, in the wing designated for that purpose."

Article 759

"Any person who has been sentenced to imprisonment in default may prevent or terminate its enforcement either by paying or depositing a sum sufficient to extinguish his debt or by providing a surety recognised as suitable.

The surety's recognisance shall be taken by the collector of taxes. Where the surety's suitability is contested, the issue shall be determined by the president of the tribunal de grande instance, exercising his jurisdiction to make interim orders on urgent applications.

The surety must discharge the debt within one month, failing which proceedings may be taken against him.

Where the debt has not been paid in full, and subject to the provisions of Article 760, an application for a new warrant of committal may be made in respect of the outstanding sum."

Article 760

"Where imprisonment in default has ended, for whatsoever reason, it may not be imposed again either in respect of the same debt or in respect of orders to pay made before its enforcement, unless these orders are for sums in respect of which the term of imprisonment in default is longer than the term already served, in which case the first period of imprisonment must always be deducted from the new term."

Article 761

"Imprisoned debtors shall be subject to the same regime as convicted persons, without however being required to work."

Article 762

"A convicted person who has been imprisoned in default of payment shall not be absolved from the obligation to make the payments in respect of which he has been imprisoned."

(b) The Customs Code

18. The following provisions of the Customs Code are relevant:

Article 382

"1. Judgments concerning customs offences may be executed by any means provided for by law.

2. Judgments by which persons are convicted of offences against customs legislation shall also be enforceable by imprisonment in default ..."

Article 388

"A person convicted of a customs offence or an offence relating to indirect taxation may, where the court makes an express order to this effect, be held in custody, even if an ordinary appeal or an appeal on points of law has been lodged, until he has paid the fiscal penalties imposed on him; save in the case of drug offences, any period of detention served on that account following conviction shall be set off against the imprisonment in default ordered by the court and may not exceed the minimum period laid down in the Code of Criminal Procedure for failure to comply with an order to pay a sum equal to the fiscal penalties imposed."

Article 414

"Smuggling and undeclared importation or exportation shall be punishable, where the contraband goods are prohibited or attract a high rate of duty within the meaning of this Code, by a term of imprisonment not exceeding three years, confiscation of the contraband goods, confiscation of the means of transport, confiscation of articles used to conceal the offence and a fine of not less than the value and not more than twice the value of the goods in question.

..."

(c) The Public Health Code

19. Article L. 627-6, second paragraph, of the Public Health Code provides:

"As an exception to the provisions of Article 750 of the Code of Criminal Procedure, the length of imprisonment in default shall be two years where fines and any other pecuniary penalties imposed for one of the offences mentioned in the preceding paragraph [breaches of provisions of statutory instruments concerning poisonous substances or plants classified as dangerous drugs] or for the related customs offences exceed 500,000 francs."

20. Article L. 627-6 was repealed by Law no. 92-1336 of 16 December 1992, called "the adapting law", on the entry into force of the new Criminal Code and the amendment of certain provisions of criminal law and criminal procedure made necessary by its commencement. It was replaced by Article 706-31 CCP, which came into force on 1 March 1994 and provides:

"Prosecution for the offences defined in Articles 222-34 to 222-38 of the Criminal Code shall be subject to limitation after ten years. The sentence pronounced on conviction of one of these offences shall be subject to limitation after twenty years from the date on which the conviction became final.

As an exception to the provisions of Article 750, the length of imprisonment in default shall be two years where fines and any other pecuniary penalties imposed for one of the offences mentioned in the preceding paragraph or for the related customs offences exceed 500,000 francs."

PROCEEDINGS BEFORE THE COMMISSION

21. Mr Jamil applied to the Commission on 13 November 1989. He complained that the Paris Court of Appeal's order that the term of imprisonment in default should be increased breached Article 7 (art. 7) of the Convention.

22. The Commission declared the application (no. 15917/89) admissible on 30 November 1992. In its report of 10 March 1994 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 7 (art. 7). The full text of the Commission's opinion and of the concurring opinion contained in the report is reproduced as an annex to this judgment (1).

1. Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 317-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT

23. In their memorial the Government asked the Court "to hold that there has been no violation of Article 7 (art. 7) of the ... Convention ... to Mr Jamil's detriment".

24. The applicant asked the Court "to hold that imprisonment in default in connection with drug offences is a penalty, to which Article 7 (art. 7) of the ... Convention ... is applicable".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 7 para. 1 (art. 7-1) OF THE CONVENTION

25. Mr Jamil complained of the prolongation - by twenty months - of the term of imprisonment in default ordered by the Paris Court of Appeal pursuant to a law enacted after the offence was committed. He contended that this infringed the principle that penalties must not be applied retrospectively, as enunciated in Article 7 (art. 7) of the Convention, which provides:

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article (art. 7) shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

A. Applicability of Article 7 para. 1 (art. 7-1)

26. The main question to be resolved is whether the measure provided for in Article 749 of the Code of Criminal Procedure is a penalty within the meaning of the second sentence of Article 7 para. 1 (art. 7-1).

27. The applicant asserted that Article 749 prohibited the imposition of imprisonment in default in a civil matter. He emphasised that, in

addition to criminal proceedings, the public prosecutor's office could bring an ancillary action on behalf of the customs for the imposition of fiscal penalties. It followed that imprisonment in default and the fine whose payment it was intended to ensure were penalties, as the fine could not be a substitute for customs duties not collected when prohibited goods were illegally imported. The applicant also complained that the imposition of imprisonment in default was automatic and that the fines for drug trafficking were so heavy that in practice convicted offenders had no means of paying them.

28. The Commission agreed with Mr Jamil's argument in substance.

29. The Government contended that Article 7 (art. 7) was not applicable in the case as imprisonment in default was not a penalty. Customs fines, even supposing that they determined the nature of imprisonment in default, were intended to indemnify and compensate. They were calculated on the basis of the value of the contraband goods, not the debtor's ability to pay, and were designed to make good the pecuniary and non-pecuniary damage sustained by the customs through the illegal import of prohibited goods.

Deprivation of liberty through imprisonment in default, which was in any event permitted under Article 5 para. 1 (b) (art. 5-1-b) of the Convention, did not belong to the "criminal" sphere (*matière pénale*) within the meaning of Article 6 (art. 6) thereof. It was a means of enforcing payment of a debt to the State directed against the debtor's person, not imprisonment in lieu of payment, and punished not the commission of an offence but failure to comply with a pecuniary order. It was similar to seizure of movable or immovable property, which resulted in deprivation of possessions.

Failure to pay a sum of money was not a criminal offence in French law, and only a particular category of persons could be defaulters. The rule complained of did not therefore concern virtually the whole population, but only debtors whose solvency had been proved and who refused to discharge their debt. The severity of the detention was not by itself the decisive factor, and the conditions of that detention also took it out of the criminal sphere. The prisoner was not entitled to remission, pardon, parole or rehabilitation. There was no qualifying period for external placements, semi-liberty or leave. The prisoner could not be prosecuted for escape, and the period of detention on remand was not set off against imprisonment in default. Above all, enforcement of imprisonment in default did not extinguish the debt or absolve the debtor from the obligation to pay, since he was released only if he paid part of the fine or furnished proof of his insolvency. There was no criminal justice system in which an obligation would continue to exist in this way after enforcement of a penalty arising from it.

30. The Court reiterates that the word "penalty" in Article 7 para. 1 (art. 7-1) is autonomous in meaning. To render the protection afforded by Article 7 para. 1 (art. 7-1) effective, the Court must remain free to go behind appearances and assess for itself whether a particular measure amounts in substance to a "penalty" within the meaning of this provision (art. 7-1) (see, as the most recent authority, the *Welch v. the United Kingdom* judgment of 9 February 1995, Series A no. 307-A, p. 13, para. 27).

31. The wording of Article 7 para. 1 (art. 7-1), second sentence, indicates that the starting-point in any assessment of the existence of a penalty is whether the measure in question is imposed following conviction for a "criminal offence". Other factors that may be taken into account as relevant in this connection are the characterisation of the measure under national law; its nature and purpose; the

procedures involved in the making and implementation of the measure; and its severity (see the Welch judgment previously cited, p. 13, para. 28).

32. The Court notes that the sanction imposed on Mr Jamil was ordered in a criminal-law context - the prevention of drug trafficking. It observes, however, that in France imprisonment in default is not confined to this single, ordinary-law field. As it is a means of enforcing the payment of debts to the Treasury other than those partaking of the nature of civil damages, it can also be attached to penalties for customs or tax offences, among others.

In order to determine how imprisonment in default should be classified for the purposes of Article 7 (art. 7), it is therefore necessary also to ascertain its purpose and the rules which govern it. The measure in question is intended to ensure payment of fines, *inter alia*, by enforcement directed at the person of a debtor who cannot prove his insolvency, and its object is to compel such payment by the threat of incarceration under a prison regime. This regime is harsher than for sentences of imprisonment under the ordinary criminal law, mainly because it is not attenuated as they are by such measures as parole or pardon. Imprisonment in default is a survival of the ancient system of imprisonment for debt; it now exists only in respect of debts to the State and does not absolve the debtor from the obligation to pay which led to his committal to prison. Although he can no longer thereafter be compelled to pay by means directed against his person, his goods are still subject to distraint. It is not a measure which can be likened to the seizure of movable or immovable property referred to by the Government.

The sanction imposed on Mr Jamil was ordered by a criminal court, was intended to be deterrent and could have led to a punitive deprivation of liberty (see, *mutatis mutandis*, the Engel and Others v. the Netherlands judgment of 8 June 1976, Series A no. 22, p. 35, para. 82, and the Öztürk v. Germany judgment of 21 February 1984, Series A no. 73, p. 20, para. 53). It was therefore a penalty within the meaning of Article 7 para. 1 (art. 7-1) of the Convention.

Admittedly, the applicant was absolved from the obligation to pay a substantial part of the customs fine, although he had never been made to serve any period of imprisonment in default, a fact for which the Government have not supplied any explanation. However, that exemption does not suffice to invalidate the foregoing analysis.

33. In short, Article 7 para. 1 (art. 7-1) is applicable in the case.

B. Compliance with Article 7 para. 1 (art. 7-1)

34. The Court notes that at the time when the offences of which Mr Jamil was convicted were committed, the maximum period of imprisonment in default to which he was liable was four months (see paragraphs 10 and 17 above). The Paris Court of Appeal nevertheless applied a new law which had increased the maximum to two years (see paragraphs 11 and 19 above).

35. No one contested that in the instant case this law on the prevention of drug trafficking was applied retrospectively (see paragraph 11 above).

36. It follows that there has been a breach of Article 7 para. 1 (art. 7-1).

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

37. Under Article 50 (art. 50),

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

A. Non-pecuniary damage

38. Mr Jamil first claimed compensation for non-pecuniary damage, which he put at FRF 100,000, and which he alleged he had sustained when he had to serve his ordinary-law sentence with the prospect of a two-year prolongation.

39. Like the Government and the Delegate of the Commission, the Court considers that the finding of a breach of Article 7 (art. 7) constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained, as the applicant did not serve any period of imprisonment under the warrant of committal for default.

B. Costs and expenses

40. Mr Jamil also claimed FRF 50,000 in respect of the costs and expenses incurred in the proceedings in the Court of Cassation and at Strasbourg. He maintained that the conclusion of a friendly settlement with the customs authorities was not unconnected with the fact that he had lodged an application with the Convention institutions.

41. The Government, subject to proof of costs, and the Delegate of the Commission left this matter to the discretion of the Court.

42. On the basis of the information in its possession and its case-law in the matter, the Court allows the applicant's claim in full.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that Article 7 para. 1 (art. 7-1) of the Convention is applicable in the case;
2. Holds that there has been a breach of Article 7 para. 1 (art. 7-1) of the Convention;
3. Holds that the finding of this breach constitutes sufficient just satisfaction for any non-pecuniary damage sustained;
4. Holds that the respondent State is to pay the applicant, within three months, 50,000 (fifty thousand) French francs for costs and expenses.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 8 June 1995.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar