

In the Martins Moreira case *,

(*) Note by the Registrar: The case is numbered 21/1987/144/198. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

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 F. Gölcüklü,
Mr J. Pinheiro Farinha,
Sir Vincent Evans,
Mr R. Macdonald,
Mr J.A. Carrillo Salcedo,
Mr N. Valticos,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 25 June and 7 October 1988,

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") and by the Government of Portugal ("the Government") on 18 December 1987 and 29 January 1988 respectively, within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 11371/85) against Portugal lodged with the Commission under Article 25 (art. 25) by Mr José Martins Moreira, a Portuguese national, on 24 July 1984.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) of the Convention and to the declaration whereby Portugal recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Articles 45, 47 and 48 (art. 45, art. 47, art. 48). Both sought a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1).

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 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. Pinheiro Farinha, the elected judge of Portuguese nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3(b)). On 30 January 1988, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr G. Lagergren, Mr F. Gölcüklü, Sir Vincent Evans, Mr R. Macdonald and Mr J. A. Carrillo Salcedo (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr N. Valticos, substitute judge, replaced Mr Lagergren,

who had resigned and whose successor at the Court had taken up her 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 Government, the Delegate of the Commission and the applicant's lawyer on the need for a written procedure (Rule 37 para. 1). In accordance with the order made in consequence on 11 February 1988, the registry received the Government's memorial on 27 April 1988 and the applicant's claims under Article 50 (art. 50) of the Convention on 17 May.

In addition, on 25 March 1988, the Commission submitted documents which, on the President's instructions, the registry had requested.

5. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 17 May 1988 that the oral proceedings should open on 21 June 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:

(a) for the Government

Mr I. Cabral Barreto,
Deputy Principal Public Prosecutor of the
Republic, Agent,

Ms Marta Santos Pais, of the Office of
the Principal Public Prosecutor of the
Republic, Counsel;

(b) for the Commission

Mr J.J. Campinos, Delegate;

(c) for the applicant (who was also present)

Mrs N. Neves Anacleto, Counsel.

The Court heard addresses by Mr Cabral Barreto for the Government, by Mr Campinos for the Commission and by Mrs Neves Anacleto for the applicant, as well as their replies to its questions. At the hearing the lawyers representing the Government and the applicant produced various documents.

7. On 4 August, Mrs Neves Anacleto communicated to the registry her client's claims in respect of lawyer's fees. The Government submitted their observations in this matter on 9 September 1988.

AS TO THE FACTS

8. Mr José Gonçalves Martins Moreira, a Portuguese national born in 1929, is a bank employee and resides at Loures (Portugal).

On 12 November 1975, he was a passenger in a car driven by Mr Virgílio da Silva Pontes who was the owner of the vehicle. Near Évora their car was in collision with a vehicle owned by Mr António dos Reis and driven by Mr Francisco Techana.

The applicant was injured in the accident and remained in hospital until 14 May 1976. In August 1976 and August 1977 he underwent surgery in London. He now suffers from a 25% permanent disability.

9. The State Counsel's department at the Evora Court of First Instance was notified of the accident by the local police and instituted criminal proceedings against the two drivers for unintentionally causing physical injury. The file on the case was closed in 1976 under an amnesty provided for in a legislative decree.

1. Proceedings in the Court of First Instance

10. On 20 December 1977, Mr Martins Moreira and Mr Pontes ("the plaintiffs") instituted civil proceedings in the Evora Court of First Instance against Mr Francisco Techana, Mr Antonio dos Reis, the Gestetner company, on whose behalf the journey was undertaken, and the insurance company "Império" ("the defendants"). The latter company's liability was contractually limited to 200,000 escudos. The applicant claimed damages of 1,393,737.80 escudos, and the sums to be determined in the enforcement proceedings (liquidação em execução de sentença) in respect of any future expenses resulting from the collision.

In accordance with Article 68 of the Road Traffic Code, the action fell to be dealt with under the summary procedure, which entails the reduction of certain time-limits (Articles 783 to 792 of the Code of Civil Procedure; see the Guincho judgment of 10 July 1984, Series A no. 81, p. 8, para. 10).

(a) Preliminary proceedings

11. On 13 January 1978, the court issued writs summoning the defendants; requests for the service of writs (cartas precatórias) were required for those who did not reside in Evora.

The insurance company "Império" filed its defence submissions (contestação) on 9 February 1978. The other defendants did so on 14 March.

In addition, the Gestetner company lodged a preliminary objection. It contended that it lacked the capacity to be a defendant because it had not had "effective control of the vehicle which caused the accident" within the meaning of Article 503(1) of the Civil Code. The plaintiffs submitted their observations on this objection within the five-day period accorded to them pursuant to Article 785 of the Code of Civil Procedure.

The insurance company, Império, submitted an interlocutory application seeking leave for the intervention (intervenção principal) of the Evora Civil Hospital, the Santa Maria Hospital of Lisbon and the insurance company "Comércio e Indústria".

12. The court acceded to this request on 31 March 1978 and subsequently invited the interveners to put forward their claims.

On 27 April, the court gave the State Counsel until 7 May to submit the observations of the intervening hospitals. It later extended this time-limit by three months, pursuant to Article 486(3) of the Code of Civil Procedure. Owing to the judicial vacation, this new time-limit did not in fact expire until 1 October 1978.

13. Upon the conclusion of the written stage of the proceedings, the court decided on 6 November 1978 to hold within ten days (Article 508(1) of the Code of Civil Procedure) a preliminary hearing with a view, inter alia, to examining the preliminary objection raised by the Gestetner company.

On 21 December, the court granted legal aid to the plaintiffs, but refused to accord it to Mr Techana and Mr dos Reis.

14. On 18 January 1979 the registry transmitted the file to the court which delivered a preliminary decision (despacho saneador)

on 3 March. In this decision, which was 35 pages long, the court dismissed the objection and drew up a list setting out the uncontested facts (especificação) and the facts to be clarified at the hearing (questionário). There remained 133 facts which were yet to be established (quesitos). Moreover, the court observed that its delay in giving a ruling (which exceeded the 10 days laid down in Article 787 of the Code of Civil Procedure) was due to an excessively heavy workload and the complexity of the objection examined.

15. Mr Techana and Mr dos Reis, together with the Gestetner company, contested the above-mentioned list by means of an objection (reclamação - Article 511(2)). The plaintiffs submitted their reply on 17 April 1979. On 19 April, the registry transmitted the file to the court which, by an order of 26 May, allowed in part the objection of the first two defendants, but dismissed that of the Gestetner company. On 6 June, Gestetner filed appeals against this decision and the preliminary decision of 3 March 1979 for transmission to the Evora Court of Appeal (tribunal de relação).

The judge of the Evora Court of First Instance received the two appeals on 8 June. On 6 July, he decided that they should not be communicated to the Court of Appeal until any appeal in respect of the decision on the merits of the case had been lodged.

(b) Investigation proceedings

16. The parties were then invited to submit their lists of witnesses and any other evidence. On 11 October 1979, the plaintiffs asked the court inter alia to order an expert medical opinion in respect of a number of facts or questions requiring clarification at the hearing. The medical examination was to take place at the Lisbon Institute of Forensic Medicine ("the Institute") in accordance with Article 600(2) and (3) of the Code of Civil Procedure. Under the terms of these provisions:

"2. Within the jurisdictions of Lisbon, Oporto and Coimbra, forensic medical examinations, and other examinations which they are particularly qualified to carry out, shall be undertaken by the institutes of forensic medicine. Other examinations requiring specific knowledge in a specialist medical field or requiring research to be carried out by laboratories or other specialised institutions shall be effected in an official establishment by the professors or technical assistants of such establishments.

3. The above provision shall apply to all the other jurisdictions where the articles or persons to be examined may without inconvenience be transported to the institute or establishment in question. The examination shall be conducted in Lisbon, Oporto or Coimbra, depending on the court of appeal within whose jurisdiction the competent court is situated."

17. On 31 October 1979, the registry transmitted the file to the court, which finally allowed the request on 13 February 1980. In order to explain this delay (which exceeded the five-day period provided for in Article 159(2) of the Code), the court cited its excessive workload. It also asked the defendants to indicate to it within five days on which of the facts contained in the questionário the medical experts were to give an opinion.

The Gestetner company was notified of this order on 28 February and supplied the information requested on 7 March 1980.

18. It was not until 29 April 1980 that the court, which had received the file from the registry on 12 March and which claimed an excessive workload, ordered the Lisbon Medical Faculty to fix the date and time at which a medical specialist in orthopaedics and traumatology could examine the plaintiffs.

On 14 May, the President of the Council of the Lisbon Medical Faculty informed the court that orthopaedic expert examinations had been suspended as no specialists were available.

19. On 23 May, the court ordered that the plaintiffs' medical examination be carried out by the Lisbon Civil Hospital. However, that hospital's orthopaedic department informed the court on 20 June 1980 that it could not carry out the examination requested because the persons concerned had never attended the hospital in question and its workload was very heavy.

20. On 26 June 1980 the court received the file from the registry and, on 3 July, it ordered that the medical examinations should be carried out at the Institute. It invited the Institute's Director to set a date for these examinations and indicated that they should be concluded within a month. The court explained, in addition, why it had not acceded earlier to the plaintiffs' request that the examinations be effected at the Institute: as far as it was aware, this establishment did not have any orthopaedic specialists. In view of the lack of progress in the proceedings, however, it altered its position. At the same time, it informed the Head of the Private Office of the Minister of Justice of the situation and asked him to indicate in which establishment it would be possible to carry out medical examinations in orthopaedics and traumatology.

On 17 July, the Assistant Director of the Institute informed the court that the plaintiffs would be examined on 6 October 1980. On 23 July, the court ordered the plaintiffs to attend the Institute on this date.

21. On the appointed day the plaintiffs were examined by two doctors of the Institute who drew up a report for the court. In this report they concluded that the plaintiffs should undergo a further examination following the production of a number of documents concerning their state of health, inter alia: the reports of the hospitals which they had attended and the Portuguese translation of the reports of an English specialist who had treated them in London in 1977. Furthermore and in accordance with Article 600(2) of the Code of Civil Procedure, the plaintiffs were to undergo an examination effected in an appropriate public establishment by orthopaedic experts who would furnish replies to the questions set out in the preliminary decision of 3 March 1979.

This report reached the court on 15 October 1980 and was communicated to Mr Pontes and Mr Martins Moreira the following day.

22. On 20 October, the plaintiffs requested the court to obtain certain documents directly from the hospitals concerned, to accord them a period of thirty days within which to lodge others (including the Portuguese translation of the medical reports written in English) and to ask the Institute to indicate which public establishment they should apply to for the orthopaedic examinations.

The registry transmitted the file to the court on 28 October 1980.

23. On 5 January 1981, the plaintiffs submitted a new application requesting that the court itself appoint as medical experts orthopaedic specialists practising in Evora. They stated that they had not realised that the Institute was not in a position to carry out such examinations or that its role was merely to co-ordinate information supplied by the plaintiffs or requested from other hospitals. Had they done so, they would not have made the initial request. They added that they hoped to be examined more quickly in Evora than in Lisbon in view of the long waiting lists for hospitals in the capital.

24. The court allowed this application on 23 February. It ordered

the hospitals concerned to produce the documents requested by the Institute and asked the Evora Civil Hospital to set a date for the plaintiffs' examination. However, the administrative authorities of this establishment informed the court on 24 March that it should itself appoint the experts, since the hospital was not competent to carry out medico-legal expert examinations.

Accordingly, on 27 March, the court asked the hospital to communicate to it the list of orthopaedic specialists practising there. It received this on 7 April.

25. On 21 April 1981, the registry transmitted the file to the court which, on the same day, decided that it would appoint the experts on 4 May. On this date, in the presence of all the parties to the proceedings, the court appointed three experts, one proposed by the plaintiffs, another by the defendants and a third chosen by the court.

On 6 May, the court summoned the experts to appear on 1 June in order to take their oaths. They duly did so and were immediately given 15 days within which to complete their task.

26. Also on 1 June, the plaintiffs lodged with the court registry the Portuguese translation of the reports drawn up by their English doctor.

27. On 15 June 1981, the experts informed the court that they were in a position to reply to the questions which they had been asked to consider. The same day the court ordered that the experts should appear before it on 23 June.

In their replies, the experts concluded unanimously that the applicant suffered from a 25% permanent disability and Mr Pontes a 50% permanent disability, that in both cases their state of health was stable, and that no deterioration was expected or further treatment likely to be required.

28. On 9 July 1981, the court took note of Mr Pontes's failure to supply the Portuguese translation of a medical report requested by the Institute. On 20 July, it asked the Institute to set a date for a further medical examination of the plaintiffs. On 1 September, the Institute announced that the examination would be carried out on 6 October 1981.

On this date, the two plaintiffs were examined with reference to the documents produced. The Institute drew up a final report regarding Mr Martins Moreira. As far as Mr Pontes was concerned, it again asked for certain documents concerning his state of health, in particular Portuguese translations of two reports in English of August and September 1981. Mr Pontes forwarded these documents to the court on 9 November.

On 18 November, the court asked the Institute to examine Mr Pontes again. On 4 December, this examination was fixed for 25 January 1982. The results were communicated to the court on 5 February 1982.

(c) The trial hearing

29. On 26 March 1982, the court decided that the oral proceedings should open on 12 May. However, the insurance companies Comércio e Indústria, an intervener, and Império, a defendant, failed to appear and the proceedings were adjourned until 1 July.

The hearing finally took place on 1, 2 and 5 July 1982. Mr Martins Moreira increased the amount of damages sought from the 1,393,737.80 escudos originally claimed (see paragraph 10 above) to 2,787,479 escudos, in order to take account of inflation.

30. On 15 July at a public hearing, the court set out the facts of the case as found. At the same hearing the parties also presented argument regarding questions of law.

31. On 1 October 1982, it declared the action brought by Mr Martins Moreira and Mr Pontes well founded in part. It ordered the defendants jointly to pay to the applicant damages of 732,000 escudos.

However, the question of the reimbursement of the costs incurred by the plaintiffs as a result of the journeys which they had to make to receive treatment following the accident was reserved for the subsequent enforcement proceedings, in accordance with Article 661(2) of the Code of Civil Procedure.

2. Proceedings in the Evora Court of Appeal

32. On 13 October 1982, Mr Martins Moreira lodged an appeal against this judgment in the Evora Court of Appeal. He did not contest the facts established at first instance, but complained that the amount of compensation awarded to him was insufficient.

His appeal and that of the Gestetner company were declared admissible by decision of 19 October, which was notified to the interested parties on 16 November.

After the costs and expenses of the proceedings had been calculated and paid, the registry of the Evora court transmitted the file to the Court of Appeal on 23 June 1983. The appeal was registered on 30 June and the proceedings followed their normal course.

In accordance with its order of 14 November 1983, the appeal court received the applicant's pleadings on 20 December 1983, those of Gestetner on 25 January 1984 and those of Império on 24 April 1984. Comércio e Indústria, the Evora Hospital and the Santa Maria Hospital of Lisbon did not submit pleadings, but the proceedings could not continue until 30 July 1984, when the last time-limit fixed for submission of their pleadings expired.

33. After having obtained the visas (vistos) of those of its members called upon to consider the case, by judgment of 30 May 1985 the Court of Appeal increased Mr Martins Moreira's damages from 732,000 to 1,032,000 escudos.

3. Proceedings in the Supreme Court (Supremo Tribunal de Justiça)

34. The defendant company Gestetner appealed to the Supreme Court on 13 June 1985. For their part, the plaintiffs lodged a "secondary" appeal (recurso subordinado) with the same court on 11 July.

After the completion of formalities, the file reached the registry on 17 October 1985. On 15 November, the judge-rapporteur fixed a time-limit for the submission of the parties' pleadings. On 6 January 1986, he received those of the Gestetner company and on 3 February the plaintiffs'. The latter argued in particular that the damages awarded in respect of non-pecuniary injury were too small and that they should in addition receive an amount, to be determined in the course of subsequent enforcement proceedings, in respect of future damage arising from their incapacity to work.

The time-limits for submission of the interveners' observations expired on 9 May 1986. On 9 June, Gestetner submitted a counter-pleading. The file was then communicated to the State Counsel for his views, and to the deputy judges for their consideration.

35. The Supreme Court delivered its judgment on 5 February 1987. It took into account the plaintiffs' permanent disability resulting from the accident and, with regard to this aspect of their appeal, found in

their favour, awarding them an additional amount, to be determined in the enforcement proceedings, in respect of damage which it had been impossible to calculate at first instance. For the rest, it upheld the Court of Appeal's decision. The judgment was notified to the applicant on 9 February.

4. The enforcement proceedings

36. On 28 October 1987, Mr Pontes and the applicant asked the Evora Court of First Instance to order the payment of the part of the damages awarded to them by the Court of Appeal which had already been calculated. They listed the attachable goods of the Gestetner company. However, the attachment, for which a writ was issued for service in Lisbon, proved impossible since, on 18 January 1988, the competent court found that the company was subject to proceedings which subsequently resulted, on 25 March 1988, in a declaration of insolvency. For its part the Império company paid into court the sum of 184,334 escudos because of the difficulties encountered in dividing this amount between the applicant, Mr Pontes and the Comércio e Indústria company.

The enforcement proceedings are still pending since the plaintiffs have not yet indicated other attachable property. However, the court registry has drawn up a statement of the costs relating thereto and the parties concerned have had to pay them.

For this reason the applicant has not yet requested the award of the damages which have still to be calculated.

5. The applicant's complaints concerning the length of the proceedings

37. On 26 January 1981, before his medical examinations were terminated (see paragraph 23 above), the applicant complained to the ombudsman (Provedor de Justiça) about the length of the proceedings. The latter replied to him in March 1981 that he had communicated the substance of his complaint to the Supreme Council of the Judiciary (Conselho Superior da Magistratura) which had sent to him a memorandum from the Evora court setting out the problems, legal and otherwise, raised by the case. The ombudsman discontinued his investigation of the complaint on 20 July 1981.

38. On 3 March 1983, while he was waiting for the transmission of the file from the Evora Court of First Instance to the Court of Appeal (see paragraph 32 above), Mr Martins Moreira again applied to the ombudsman and asked him to intervene.

On 7 April, the ombudsman informed the applicant that he had notified the Supreme Council of the Judiciary of the situation.

On 28 December 1983, the ombudsman again wrote to the applicant to inform him of the result of the representations which he had made to the Supreme Council of the Judiciary and the Ministry of Justice. It appeared that the delay in the proceedings was due to the time required to establish a statement of the costs of one of the experts and to the lack of staff at the Evora Court of First Instance. Consequently, the ombudsman decided not to pursue the complaint.

PROCEEDINGS BEFORE THE COMMISSION

39. In his application of 24 July 1984 to the Commission (no. 11371/85), Mr Martins Moreira complained of the length of the civil proceedings which he had instituted on 20 December 1977 in the Evora Court of First Instance. He considered it to be in breach of Article 6 para. 1 (art. 6-1) of the Convention.

40. The Commission declared the application admissible on

14 October 1986. In its report of 15 October 1987 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 para. 1 (art. 6-1). The full text of its opinion is annexed to this judgment.

FINAL SUBMISSIONS OF THE GOVERNMENT

41. At the hearing on 21 June 1988, the Government confirmed in substance the submission made in their memorial, requesting the Court "to find that this case discloses no violation of Article 6 para. 1 (art. 6-1) of the Convention".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

42. According to the applicant, the time taken to hear the action for damages brought by himself and Mr Pontes in the Evora Court of First Instance was not "reasonable" within the meaning of Article 6 para. 1 (art. 6-1) of the Convention, according to which:

"In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by a ... tribunal ..."

The Commission agreed in substance with this view, which was contested by the Government.

A. Period to be taken into consideration

43. In this case the period to be considered did not begin to run when the action was first brought before the competent court (20 December 1977, see paragraph 10 above), but only when, on 9 November 1978, the Portuguese declaration accepting the right of individual petition took effect. However, in order to determine whether the time which elapsed following this date was reasonable, it is necessary to take account of the stage which the proceedings had reached at that point (see, most recently, the Milasi judgment of 25 June 1987, Series A no. 119, p. 45, para. 14).

44. In the view of the Government and the Commission, the period in question ceased to run on 9 February 1987, when the judgment delivered four days earlier by the Supreme Court was notified to the applicant (see paragraph 35 above).

The Court, on the other hand, agrees with Mr Martins Moreira that the relevant period should also extend to the subsequent enforcement proceedings (see paragraph 36 above and the Guincho judgment of 10 July 1984, Series A no. 81, p. 13, para. 29). These proceedings constituted a second stage, which had to be set in motion by the plaintiffs. They did not begin until 28 October 1987, eight months after the judgment, and only concerned the part of the damages which had already been calculated. They are as yet uncompleted as a result, *inter alia*, of the insolvency of the defendant company Gestetner (see paragraph 36 above). The first stage, which covered the period from 9 November 1978 to 9 February 1987, in itself lasted eight years and three months.

B. Reasonableness of the length of the proceedings

45. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law (see, most recently, the Baraona judgment of 8 July 1987, Series A no. 122, p. 19, para. 47).

46. As the Government have stressed, under Article 264(1) of the

Portuguese Code of Civil Procedure it is for the parties to take the initiative with regard to the progress of proceedings. However, this does not absolve the courts from ensuring compliance with the requirement of Article 6 (art. 6) concerning reasonable time (see, most recently, the Baraona judgment cited above, p. 19, para. 48). Moreover, Article 266 of the Code requires them to take appropriate measures to remove obstacles liable to prevent the trial from progressing speedily. In addition, under Article 68 of the Road Traffic Code, the action brought by the applicant fell to be dealt with under the summary procedure, which entails the reduction of various time-limits (see paragraph 10 above).

1. Complexity of the case

47. The Government contended that the case was one of great complexity. There were two plaintiffs and several defendants and interveners, each with successive time-limits for the submission of their various pleadings. Furthermore, the file comprised no less than 1,800 pages and the dispute was far from easy to resolve.

Mr Martins Moreira, on the other hand, stressed that there was nothing unusual about an action for damages in respect of injuries resulting from a road accident.

48. The Court shares the Commission's view that the case was not in itself a complex one.

It is undoubtedly true that some of the factors listed by the Government had an effect on the progress of the proceedings and that difficulties were encountered in obtaining an expert medical opinion (see paragraphs 55-57 below), but these were mere procedural difficulties which cannot justify the excessive length of the proceedings. In the end, the experts appointed by the court took only fifteen days to complete their task (see paragraphs 25-27 above).

2. Conduct of the applicant

49. The Government relied on the fact that Mr Martins Moreira had brought his action jointly with Mr Pontes and that, with the latter, he had subsequently asked to be examined by the Lisbon Institute of Forensic Medicine (see paragraphs 10 and 16 above).

However, the applicant's behaviour appears natural and understandable in both respects. With regard to the first point, it should be noted that the liability of the insurance company Império was limited by contract to 200,000 escudos for all the damage sustained (see paragraph 10 above) and that the introduction of a single action made it possible to avoid two separate sets of proceedings which would have given rise to unnecessary complications.

As far as the Government's second point is concerned, the Court observes that Article 600(2) of the Code of Civil Procedure (see paragraph 16 above) refers expressly to institutes of forensic medicine. It follows that the plaintiffs and their lawyers were entitled to presume that these establishments possessed the necessary facilities. They could hardly be expected to verify it for themselves.

50. On the other hand, the Court, like the Commission, recognises that the applicant could have assisted the doctors of the Institute in their task by providing them with the necessary documents more expeditiously. In October 1980, they had requested various clinical records and the Portuguese translation of the reports of an English specialist (see paragraph 21 above). The Evora court obtained the clinical reports through official channels as the plaintiffs had requested it to do on 20 October 1980 (see paragraph 22 above), but the applicant did not produce the translations until 1 June 1981 (see

paragraph 26 above). This is a fact which cannot be attributed to the respondent State and which must be taken into account (see, inter alia, the Lechner and Hess judgment of 23 April 1987, Series A no. 118, pp. 18-19, para. 49). Nevertheless, ultimately, this did not prolong the proceedings unduly. The court did not appoint the orthopaedic experts until 4 May 1981 and they did not take their oaths before it until 1 June. On this date, it gave them 15 days to complete their task, and they did so within that period (see paragraphs 25 and 27 above).

51. For the rest, it is clear from the file that the applicant took steps to expedite the proceedings. In January 1981 and March 1983, he wrote to the ombudsman, who referred his complaint to the Supreme Council of the Judiciary, communicating to it the applicant's letters (see paragraphs 37 and 38 above). In view of the delay in obtaining the expert opinion, the applicant also made a fresh application to the Evora court, complaining of the Institute's inactivity and proposing a solution (see paragraph 23 above).

3. Conduct of the competent authorities

52. The applicant and the Commission listed various delays attributable to the Portuguese judicial authorities and in particular to the Evora Court of First Instance.

It is an established fact that this court took more than three months to give the preliminary decision (*despacho saneador*) after the hearing held for this purpose. Such a lapse of time appears excessive notwithstanding the complication introduced by the Gestetner company's preliminary objection (see paragraphs 11-14 above). In addition, the court did not accede to Mr Martins Moreira's and Mr Pontes's request for an expert medical opinion until 13 February 1980 and to their request for an orthopaedic examination until 23 February 1981. The first request had been made on 11 October 1979 (see paragraphs 16-17 above), while the second - which followed a report from the Institute - was submitted on 20 October 1980 (see paragraphs 21-24 above). These measures were, moreover, purely administrative.

Finally, after the applicant had lodged an appeal on 13 October 1982, the registry of the Evora court waited until 23 June 1983 to transmit the file to the registry of the appeal court. In the intervening period, it merely verified that various pleadings were included in the file and drew up a statement of the costs and expenses relating to the first instance proceedings (see paragraph 32 above).

53. At the time the court cited an excessive workload (see paragraphs 17-18 above).

In fact, Mr Martins Moreira has himself indicated that on taking up his post in Evora, the judge to whom the case was assigned found more than 1,000 cases pending and also had to carry out his duties in five other courts in the surrounding district.

This state of affairs had become a structural problem. Accordingly, it required remedial action (see, inter alia, the Guincho judgment cited above, Series A no. 81, p. 17, para. 40). The competent authorities do not appear to have taken effective measures in this respect.

54. There were also delays in the proceedings in the appeal court and the Supreme Court, in particular during the examination of the file by the judges (see paragraphs 33-35 above).

In the Government's view, a comparison with the duration of proceedings at this level in the other member States of the Council of Europe would undoubtedly be favourable to Portugal.

An argument of this nature, which is moreover not supported by precise

statistics, is unconvincing. It could lead to the acceptance of unsatisfactory practices if they are sufficiently general, whereas, according to the case-law of the Court, the circumstances of each case must be taken into account (see paragraph 45 above) and, in any event, compliance with Article 6 para. 1 (art. 6-1) of the Convention must be ensured.

55. Although the various delays noted above account for more than one and a half years altogether, they do not in themselves explain the length of the proceedings. This was due, above all, - as all those appearing before the Court have acknowledged - to the difficulties encountered in obtaining an examination of the plaintiffs by orthopaedic experts.

56. In this respect, the Evora Court of First Instance was not lacking in diligence. In particular it tried to find alternative solutions, but without success.

The medical examination which the plaintiffs had requested on 11 October 1979 (see paragraph 16 above) was not completed until October 1981, for Mr Martins Moreira, and February 1982, for Mr Pontes (see paragraph 28 above). It therefore took two years for the applicant and a little more for Mr Pontes. At first sight these lapses of time appear unreasonable; they require close scrutiny.

57. The Court notes that the Portuguese court devoted a large part of the period in question to administrative steps. As it was aware that the Institute did not have any orthopaedic experts, the court turned first to the Lisbon Medical Faculty and then the Lisbon Civil Hospital. Only the failure of these moves, as a result either of the lack of specialists or of an excessive workload, led it to order, on 3 July 1980, that the examinations should take place at the Institute (see paragraphs 18-20 above). Thus it took almost nine months to make the necessary arrangements.

The examinations were conducted on 6 October 1980 and the doctors communicated their conclusions to the court nine days later. They did not, however, draw up definitive reports at this stage. Since they were not orthopaedic specialists, they recommended that the plaintiffs be asked to supply them with various documents and to undergo a further examination in an appropriate public establishment (see paragraph 21 above). The court did not succeed in appointing experts to carry out this task until 4 May 1981 (see paragraphs 24 and 25 above).

58. It took the experts only two weeks to form their opinion. After having taken the oath on 1 June 1981, on 15 June the experts notified the court that they were in a position to reply to its questions, which they did on 23 June (see paragraphs 25 and 27 above).

The Institute's doctors again examined the plaintiffs on 6 October 1981. They immediately drew up a final report concerning Mr Martins Moreira on the basis of the orthopaedic examination and other clinical documents produced, but for Mr Pontes it proved necessary to wait until 5 February 1982. He had undergone further treatment in London in August and September 1981 and the Portuguese translation of the relevant documents was not available until 9 November (see paragraph 28 above).

The Court finds it surprising that it took two years to carry out three medical examinations, the longest of which required only fifteen days. Only very exceptional circumstances could justify such a delay.

59. The Government argued that it was in any event impossible to determine the consequences of the accident with the necessary scientific precision before knowing the evolution of the plaintiffs' state of health.

This argument is not without force, but it cannot support the inference, drawn therefrom by the Government, that the delays involved in the present case were justified. Acceptance of the Government's view would mean that those whose need is greatest precisely because of the particular gravity of their injuries would be deprived of their right to obtain justice within a reasonable time, within the meaning of Article 6 (art. 6). Moreover, the experts appointed by the Evora Court concluded as early as 23 June 1981 that the state of health of Mr Martins Moreira and Mr Pontes had stabilised (see paragraph 27 above).

60. Again in the Government's view, only the conduct of the judicial authorities in question could incur the international liability of Portugal in this matter and not any errors on the part of the legislature, the executive, or organs or persons outside the State structure, in this instance the Institute, which had no hierarchical relationship with the courts.

This argument runs counter to the established case-law of the Court. In ratifying the Convention, the Portuguese State undertook the obligation to respect it and it must, in particular, ensure that the Convention is complied with by its different authorities (see, amongst other authorities and *mutatis mutandis*, the Guincho judgment cited above, Series A no. 81, p. 16, para. 38).

In this instance, the various institutions which were prevented through inadequate facilities or an excessive workload from complying with the requests of the Evora court were all public establishments. The fact that they were not judicial in character is immaterial in this respect.

This is true in particular of the Lisbon Institute of Forensic Medicine, whose lack of facilities gave rise to difficulties. Under Article 600(2) of the Code of Civil Procedure, institutes of this type are to carry out forensic medical examinations. Moreover, they were set up for this purpose and come under the administrative authority of the Ministry of Justice. Accordingly, the Portuguese State is under a duty to provide them with appropriate means in relation to the objectives pursued so as to enable them to comply with the requirements of Article 6 para. 1 (art. 6-1) (see, *mutatis mutandis*, the Bouamar judgment of 29 February 1988, Series A no. 129, p. 22, para. 52).

In any event, the examination in question was to be effected in the context of judicial proceedings supervised by the court, which remained responsible for ensuring the speedy conduct of the trial (see, *inter alia*, the Capuano judgment of 25 June 1987, Series A no. 119, p. 13, para. 30).

4. Conclusion

61. Having regard to all the circumstances of the case, the Court finds that the excessive length of the proceedings was essentially due to the conduct of the competent authorities. There has therefore been a violation of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

62. Article 50 (art. 50) of the Convention is worded as follows:

"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."

Mr Martins Moreira sought financial reparation in respect of pecuniary and non-pecuniary damage, and the reimbursement of costs and expenses incurred in Portugal and before the Convention institutions.

The Government denied that the amounts claimed had been actually and necessarily incurred and that they were reasonable as to quantum. For its part, the Commission had no views on this point. It did however consider that the applicant was in principle entitled to compensation, at least in respect of non-material damage.

A. Damage

63. In the applicant's submission, the excessive length of the proceedings prevented him from obtaining payment of even a part of the 1,032,000 escudos damages awarded to him by the Evora Court of Appeal (see paragraph 33 above). The insurance company Império's liability was limited to 200,000 escudos (see paragraph 10 above), to be divided between the company Comércio e Indústria, an intervener, and the plaintiffs in the main proceedings, Mr Pontes and Mr Martins Moreira (see paragraph 36 above). For the rest, the applicant maintained that the insolvency of the defendant company, Gestetner, had prevented him from recovering his debt (see paragraph 36 above) and he may well not receive anything in view of the extent of the company's liabilities. This is said to be the case, in particular, with regard to the costs incurred by him in respect of medical treatment. The competent court assessed these costs at 532,000 escudos. The applicant stated that, in order to meet these expenses, he had contracted loans the interest on which was already approximately 200,000 escudos.

Mr Martins Moreira claimed in addition that he had been unable to undergo a further operation in London necessitated by his present state of health because he had not received the damages awarded. He maintained that this state of affairs caused him anxiety justifying the award of 2,000,000 escudos for non-pecuniary damage.

64. The Government contended that application of the criteria laid down in its case-law would lead to a very different solution to that put forward by the applicant.

65. The Court would point out that the applicant first sought unsuccessfully to persuade the Império company and the Gestetner company to pay to him of their own accord the part of his claim which had already been calculated and then requested the enforcement of the decision delivered in his favour and the attachment of Gestetner's property (see paragraph 36 above). However, on 18 January 1988 the Lisbon court found that that company was the subject of proceedings, which subsequently resulted, on 25 March 1988, in a declaration of insolvency.

It is true that this development was subsequent to the Supreme Court's judgment of 5 February 1987 (see paragraph 35 above). However, and even though it is not certain that the applicant would have recovered the entirety of his debt if the main proceedings had been terminated earlier, it is, in the Court's view, reasonable to conclude that, as a result of the long delay, in breach of Article 6 para. 1 (art. 6-1), found by the Court in this judgment, he suffered a loss of opportunities which warrants an award of just satisfaction in respect of pecuniary damage (see, amongst other authorities and *mutatis mutandis*, the Lechner and Hess judgment of 23 April 1987, Series A no. 118, p. 22, para. 64).

66. Mr Martins Moreira also clearly suffered non-pecuniary damage. He has lived, and still lives, in a state of uncertainty and anxiety with regard to the outcome of the proceedings in question and the implications for his financial situation and his health.

67. The various components of this damage cannot be calculated precisely. The Court has assessed them as a whole and, as required by Article 50 (art. 50), on an equitable basis. It finds that the applicant should be awarded compensation of 2,000,000 escudos.

B. Costs and expenses

68. Mr Martins Moreira also claimed the reimbursement of 45,573 escudos which he had had to pay in Portugal in respect of the costs of the proceedings, despite the grant of legal aid (see paragraphs 13, 32 and 36 above), and of 12,000 escudos in respect of expenses incurred in travelling to Evora.

For the proceedings conducted before the Convention institutions, which granted him legal aid, he claimed 12,086 escudos for miscellaneous expenses and 400,000 escudos in respect of the fees of the two lawyers who represented him in turn, Mr Rodrigues and Mrs Neves Anacleto.

69. The Government urged the Court to apply the principles laid down in its case-law. In their view, these principles would militate in favour of a different solution to that proposed by the applicant. In particular, they considered that the participation of two lawyers was superfluous.

70. The Court observes that the applicant is entitled to recover the costs incurred by him in Portugal inasmuch as the length of the proceedings, which was attributable essentially to the conduct of the competent authorities (see paragraph 61 above), involved him in additional expenses and inasmuch as he attempted unsuccessfully to shorten the proceedings by taking various steps (see paragraphs 37-38 above). He is also entitled to the reimbursement of the expenses incurred in bringing the case to Strasbourg. The Court assesses the total amount recoverable under this head at 35,000 escudos.

Mrs Neves Anacleto took part in the hearing in Strasbourg on 21 June 1988 at the request of Mr Rodrigues who was himself unable to attend. It was necessary in the interests of the proper administration of justice to have a new lawyer present and she had to familiarise herself with the case prior to the hearing. Moreover, the 400,000 escudos claimed seems reasonable.

The applicant is therefore entitled to a total of 435,000 escudos by way of reimbursement of costs and expenses, less the 5,180 French francs paid by the Council of Europe as legal aid.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 para. 1 (art. 6-1);
2. Holds that the respondent State shall pay to the applicant 2,000,000 (two million) escudos in respect of damage and 435,000 (four hundred and thirty-five thousand) escudos in respect of costs and expenses, less 5,180 (five thousand one hundred and eighty) French francs to be converted into escudos at the rate applicable on the day of the delivery of the judgment;
3. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 26 October 1988.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar