



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

COURT (CHAMBER)

CASE OF MOREIRA DE AZEVEDO v. PORTUGAL

(Application no. 11296/84)

JUDGMENT

STRASBOURG

23 October 1990

In the Moreira de Azevedo 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 J. PINHEIRO FARINHA,

Mr A. SPIELMANN,

Mr J. DE MEYER,

Mr S.K. MARTENS,

Mrs E. PALM,

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

Having deliberated in private on 25 May and 26 September 1990,

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 12 October 1989, 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. 11296/84) against the Republic of Portugal lodged with the Commission under Article 25 (art. 25) by Mr Manuel Moreira de Azevedo, a Portuguese national, on 16 November 1984.

2. The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Portugal 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 6 para. 1 (art. 6-1) of the Convention.

3. 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 case is numbered 22/1989/182/240. 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 amendments to the Rules of Court which came into force on 1 April 1989 are applicable to this case.

the proceedings and designated the lawyers who would represent him (Rule 30).

4. 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 25 November 1989, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr J. Cremona, Mr A. Spielmann, Mr J. De Meyer, Mr S.K. Martens and Mrs E. Palm (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

5. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Portuguese Government ("the Government"), the Delegate of the Commission and a representative of the applicant on the need for a written procedure (Rule 37 para. 1). In accordance with the order made in consequence on 9 January 1990, the Registrar received the applicant's memorial on 12 March 1990 and that of the Government on 16 March. On 27 March the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

6. Having consulted, through the Registrar, those who would be appearing before the Court, the President had directed on 16 January 1990 that the oral proceedings should open on 23 May 1990 (Rule 38). In addition he had given the applicant's lawyers leave to plead in Portuguese (Rule 27 paras. 2 and 3).

7. On 2 March the Commission supplied the Registrar with several documents which he had requested on the President's instructions.

8. The applicant's claims under Article 50 (art. 50) of the Convention reached the registry on 11 May.

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

There appeared before the Court:

- for the Government

Mr I. CABRAL BARRETO, Deputy Principal Public Prosecutor, *Agent,*

Mr A. MADURO, Judge

at the Court of Auditors,

Mrs A. MIRANDA RODRIGUES, Professor of Law

at the Catholic University of Oporto,

Counsel;

- for the Commission

Mr A. WEITZEL,

Delegate;

- for the applicant

Mr J. LOUREIRO, advogado,

Mr M. MALVAR, advogado,

Counsel.

The Court heard addresses by Mr Cabral Barreto, Mr Maduro and Mrs Miranda Rodrigues for the Government, by Mr Weitzel for the Commission

and by Mr Loureiro for the applicant, as well as their replies to its questions and those of three of its members. On the occasion of the hearing the representatives of the Government and of the applicant produced various documents.

10. On 28 May the Registrar received from the Agent of the Government a telex message concerning the application of Article 50 (art. 50).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. Mr Manuel Moreira de Azevedo, who is a Portuguese national and resides at Vila Nova de Famalicão, is a bus driver.

12. On 23 January 1977 one of his brothers-in-law, Mr Bernardo Gonçalves de Sousa, shot him in the head following a family quarrel. The applicant was rushed to the São João de Porto hospital where he remained until 2 February 1977.

13. On the same day the police arrested the suspect and communicated the facts to the Public Prosecutor, who requested the investigating judge of the First-Instance Court of Vila Nova de Famalicão to question him.

A. The investigation

1. The preliminary inquiry (inquérito preliminar - 23 January 1977-21 May 1980)

14. Since there was insufficient evidence to establish the offence of attempted murder, the investigating judge ordered, on 24 January 1977, the provisional release of Mr Gonçalves de Sousa, subject to the lodging of a security of 10,000 escudos. He also decided to transmit the file to the Public Prosecutor for the inquiry to be continued.

15. On 17 February a court medical officer examined the applicant and asked that the medical report drawn up by the São João de Porto hospital be communicated to him.

16. This report was supplied to him on 21 March and the Public Prosecutor fixed the date of the medical examination for the 28th. On that occasion the court medical officer noted that the injuries resulting from the attack had led to Mr Moreira de Azevedo's being unfit for work for a period of 90 days. On 28 April he expressed the opinion that the applicant required

another 30 days' sick leave. On 26 May he pronounced the applicant to be recovered, but prescribed other specialist examinations.

17. On 2 June 1977 the applicant stated that he wished to intervene as an assistant (assistente) of the prosecuting authority in the preliminary investigation. The investigating judge allowed his application on 18 June 1977.

18. On 18 October and 7 November the applicant was examined by an ear, nose and throat specialist and an ophthalmologist.

19. On the recommendation of the ophthalmologist he underwent a neurological examination on 24 October 1978. This was followed on 11 June 1979 by an electroencephalogram and on 23 August by a further medical examination ordered by the Public Prosecutor.

20. On 3 October 1979 the Public Prosecutor decided, at the request of the court medical officer, to arrange for a further neurological examination.

21. As the Oporto Medical Faculty informed him that the applicant could not be examined until 1981, the Public Prosecutor entrusted this task to the court medical officer, who was invited to express an opinion in particular as to whether the assailant had acted with "the intention of causing death".

22. In a report dated 8 May 1980, the medical officer concluded that the applicant had recovered and that the period during which he had been unfit for work was the period already established. He also expressed the opinion that the assailant had indeed intended to kill.

23. In the light of this report, the Public Prosecutor communicated the file to the investigating judge on 21 May 1980, requesting him to open the preliminary investigation.

2. Preliminary investigation (instrução preparatória - 26 May 1980-5 July 1984)

24. On 26 May 1980 the investigating judge asked the Council of Forensic Medicine (Conselho médico-legal) to examine the various medical reports (Article 200 of the Code of Criminal Procedure), but to no avail.

The file was transferred to the Criminal Investigation Court (tribunal de instrução criminal) of Santo Tirso where it was registered on 1 July 1982.

25. On 8 March 1982 the applicant wrote to the investigating judge of Vila Nova de Famalicão seeking a further examination by the court medical officer and criticising the length of the proceedings.

26. On 6 July 1982 the judge of the Criminal Investigation Court of Santo Tirso sought the opinion of the Public Prosecutor as to whether an amnesty law was applicable.

27. In a letter of 13 October 1982, the applicant complained that his letter of 8 March 1982 (see paragraph 25 above) had not been added to the file; he repeated his request.

28. On 19 October 1982 the judge of the Criminal Investigation Court of Santo Tirso, in his turn, instructed the Council of Forensic Medicine to examine the medical reports and, on 4 November, asked the court medical officer to clarify some points in his report of 8 May 1980.

29. On 19 November 1982 the court medical officer recommended a further neurological examination, which the judge ordered on 23 November.

30. In the meantime, by a letter of 13 November 1982 received at the Criminal Investigation Court on 2 February 1983, the Council of Forensic Medicine had asked the court medical officer to specify the number of days during which the applicant had been unfit for work and also to indicate the after-effects of the attack. On 23 February 1983 the medical officer described the injuries and stated that the applicant had been unfit for work for 120 days and still suffered from disability. He had lost a part of his skull and was deaf in the left ear.

31. On 8 March 1983 Mr Moreira de Azevedo was examined by a neurologist who sent his report to the judge on 5 July.

32. On 21 March 1984 the judge requested the court medical officer to submit his report. He did so on 5 April 1984 and on the same day the document was sent to the Council of Forensic Medicine.

33. On 26 April 1984 that body approved the findings of the court medical officer's report, adding that the attack had resulted in a disability and a total incapacity.

34. On 14 May 1984 the judge ordered that the applicant and the accused be questioned on 24 May 1984. The applicant was questioned on that date but the accused was unwell and did not appear.

35. On 25 May 1984 the applicant asked for five witnesses to be heard.

36. On 28 May the judge decided that the accused should be questioned on 7 June 1984. However, as the latter had absented himself for an indefinite period, the bailiff was unable to serve this order on him.

37. On 5 June 1984 Mr Moreira de Azevedo submitted a report by the Public Health Department dated 15 April 1981 and drawn up following a medical examination. According to this document he suffered from a 64% incapacity.

38. On 6 June 1984 the judge issued a warrant for the accused's arrest and, on 14 June, questioned the witnesses named by the applicant.

39. On 1 July 1984 the police officer assigned to the case informed the judge that Mr Gonçalves de Sousa had disappeared.

40. On 5 July 1984 the judge closed the preliminary investigation and forwarded the file to the Public Prosecutor. On 10 July the latter requested the opening of adversarial investigation proceedings and drew up the prosecution submissions (*acusação*). He sought the accused's arrest, contending that provisional release was not available to persons charged with attempted murder.

3. The adversarial investigation proceedings (instrução contraditória - 16 July 1984-27 July 1984)

41. On 16 July 1984 the judge declared the adversarial investigation proceedings open and ordered the accused's arrest, but the latter could still not be traced.

42. On 27 July the judge closed the investigation and forwarded the file to the Public Prosecutor, who drew up the prosecution submissions on 8 October 1984.

43. The accused was committed for trial on 16 November 1984 and on 26 November 1984 was arrested and remanded in custody.

44. On 12 December 1984 the court scheduled the hearing for 5 February 1985.

45. On 21 December the applicant asked for evidence to be taken from two witnesses.

B. The proceedings in the courts

1. The trial at first instance

46. On 5 February 1985, at the beginning of the hearing, the applicant's lawyer submitted an oral request to the First-Instance Court of Vila Nova de Famalicão that the fixing of the amount of any compensation be deferred until the subsequent enforcement proceedings ("liquidação em execução de sentença"), in accordance with Article 34 para. 3 of the Code of Criminal Procedure.

47. On 18 February 1985 the court acquitted the accused on the charge of attempted murder. However, it sentenced him to 14 months' imprisonment for causing grievous bodily harm and ordered him to pay damages to the applicant in an amount to be fixed in the enforcement proceedings.

48. The applicant and the accused filed appeals.

2. The judgment of the Court of Appeal of Oporto of 30 October 1985

49. On 30 October 1985 the Oporto Court of Appeal (tribunal de relação) allowed Mr Gonçalves de Sousa's appeal. At the same time it declared the criminal prosecution out of time (five-year limitation period).

3. The judgment of the Supreme Court of 7 May 1986

50. Mr Moreira de Azevedo then appealed to the Supreme Court (Supremo Tribunal de Justiça) which, on 7 May 1986, upheld the appeal court's judgment. The letter of notification was sent to the applicant on the following day. He was deemed to have received it on the third day after its despatch (Article 1 para. 3 of Legislative Decree No. 121/76).

II. THE RELEVANT DOMESTIC LAW

A. Criminal proceedings

51. In Portugal criminal proceedings are in principle brought by the Public Prosecutor. According to Article 1 of Legislative Decree No. 35007 of 13 October 1945 "criminal proceedings are the responsibility of the authorities; they shall be brought by the Public Prosecutor subject to the restrictions provided for in the following Articles". These restrictions relate to the cases in which the police or administrative authorities or other State organs may bring criminal proceedings, but they apply in general only for petty offences. Legislative Decree No. 605/75 of 3 November 1975 also states, in Article 1 thereof, that "except as provided for by law, criminal proceedings shall be conducted by the Public Prosecutor who shall open the preliminary inquiry or communicate the file to the investigating judge, as the case may be".

52. In certain cases, private persons may participate in the criminal proceedings as assistentes. Article 4 of Legislative Decree No. 35007 provides as follows:

"The following may participate in proceedings as assistentes:

1º Those persons without whose accusation or complaint the Public Prosecutor cannot bring a prosecution;

2º The victims, namely those whose interests the criminal law sought especially to protect by prohibiting the offence;

3º The husband in trials concerning offences of which his wife has been the victim, unless she objects thereto;

4º The spouse, where there is no judicial separation or separation of property, or the surviving spouse or any ascendant, descendant, brother or sister, in cases where the victim is deceased or incapable of managing his or her own affairs;

5º Any person in trials concerning embezzlement, bribery, misappropriation of public funds or corruption.

Para. 1º - The assistentes perform the function of assistants to the Public Prosecutor; their role in the proceedings is subordinate to that of the Public Prosecutor, except in cases provided for by the law.

Para. 2º - However, the assistentes are entitled in particular:

1º to make prosecution submissions independently of those filed by the Public Prosecutor;

2º to intervene directly in the adversarial investigation proceedings by adducing evidence and requesting the judge to take the appropriate measures;

3º to appeal against the order committing the accused for trial, the judgment or the order terminating the proceedings, even if the Public Prosecutor has not done so.

Para. 3º - ... (repealed)

Para. 4º - In cases where the assistentes make prosecution submissions relating to facts different from those which are the subject of the prosecution submissions filed by the Public Prosecutor, they may not appeal against the decision of the court if it accepts the Public Prosecutor's submissions.

Para. 5º - The assistentes may intervene at any moment in the proceedings up to five days before the trial hearing and shall accept the state of the proceedings as they stand at that stage."

The preamble to the Decree states as follows:

"3. Criminal proceedings shall be brought by the Public Prosecutor in his capacity as a State authority. The right to punish an offender is a right that belongs exclusively to the State and consequently private individuals may, in accordance with the law, assist in bringing a prosecution, but have no personal right to bring one"

Article 70 of the Code of Criminal Procedure provides that the preliminary investigation is to be secret. However, according to paragraph 1 thereof the accused and the assistente may have access to certain documents in the file provided that this does not impede the discovery of the truth.

B. The victim's right to compensation

53. The Code of Criminal Procedure applicable at the material time - new provisions came into force with effect from 1 January 1988 - contained several provisions on the victim's right to compensation:

Article 29

"A claim for damages resulting from a punishable offence for which the perpetrators are liable must be brought in the criminal proceedings in process and may be brought in separate proceedings in the civil courts only in the cases provided for by this Code".

Article 30

"Except in the cases in which criminal proceedings may be brought only on the basis of a complaint or an accusation by a private party, civil proceedings may be instituted separately in the civil courts where the prosecution has not been brought by the Public Prosecutor within six months of the complaint being laid or where no action has been taken on the complaint for the same period, where the proceedings have been discontinued or where the accused has been acquitted.

Para. 1º In cases in which criminal proceedings may be brought only on the basis of a complaint or an accusation by a private party, the victim may bring civil proceedings, but if he does so, the criminal proceedings shall lapse.

Para. 2º Where criminal proceedings have been instituted, civil proceedings may be brought separately only where no action has been taken in the criminal proceedings for six months or more through no fault of the assistente where the proceedings have been discontinued or where the accused has been acquitted."

Article 32

"The claim for damages may be lodged in criminal proceedings even by a person who has not intervened as an assistente.

Para. 1º The Public Prosecutor shall seek damages on behalf of the State, where appropriate, and on behalf of bodies serving public interests or the legally incapacitated to whom compensation is payable, if they are not represented by a lawyer in the proceedings.

Para. 2º The statement of claim for damages shall be set out in articles.

Para. 3º The evidence relating to the award of damages shall be adduced within the time-limits applying for the criminal proceedings ..."

Article 34

"If the accused is convicted, the court shall decide the amount to be paid to the victims in respect of damages, even where no claim has been lodged.

Para. 1º In cases where the law accords civil compensation to other persons the amount shall be determined for each party.

Para. 2º The amount of compensation shall be determined at the discretion of the court which shall take into account the seriousness of the offence, the pecuniary and non-pecuniary damage and the financial and social position of the injured party and of the offender.

Para. 3º The persons entitled to compensation may request, before judgment is pronounced at first instance, that the amounts of compensation be decided in enforcement proceedings. In such circumstances assessment and enforcement shall take place in the civil courts, the criminal judgment serving as the basis for enforcement.

Para. 4º If, in the cases provided for by law, the civil action for damages is pending or has been judged in the civil courts, compensation shall not be determined in the criminal proceedings."

Article 12 of Legislative Decree No. 605/75, cited above, states moreover as follows:

"In cases where the accused is acquitted, the court shall order the accused to pay damages in respect of proven unlawful acts or liability based on risk, if established.

In such cases Article 34 of the Code of Criminal Procedure shall apply, adapted as necessary."

54. In a "ruling" judgment (assento) of 28 January 1976 the Supreme Court held that the civil courts had no competence to award compensation if compensation had already been awarded in the criminal proceedings (Diário da República, Series 1, 11 March 1976).

Although this decision concerned civil and criminal damages for road traffic infringements, it set out the following general considerations:

"Article 29 [of the Code of Criminal Procedure] establishes the principle of the interrelation ... between the criminal and the civil proceedings but with greater emphasis on the priority of the criminal proceedings over the civil proceedings ...

...

... The formulation of prosecution submissions in the criminal proceedings, which are intended to secure the conviction of the accused, can therefore be seen as implying a request for compensation to be awarded to the victim, because according to the law such compensation is a consequence of a conviction.

...

... the amount of compensation is determined by the criminal judgment regardless of whether the victim has filed a civil claim"

PROCEEDINGS BEFORE THE COMMISSION

55. In his application (no. 11296/84) lodged with the Commission on 16 November 1984 Mr Moreira de Azevedo complained of the length of the proceedings relating to the prosecution brought by the Public Prosecutor on 24 January 1977 in the Vila Nova de Famalicão First-Instance Court; he considered their duration to be contrary to Article 6 para. 1 (art. 6-1) of the Convention.

56. The Commission declared the application admissible on 15 April 1988. In its report of 10 July 1989 (Article 31) (art. 31), it expressed the opinion by eight votes to six that there had been no violation of Article 6 para. 1 (art. 6-1).

The full text of its opinion and of the separate opinions contained in the report is reproduced as an annex to this judgment*.

* Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 189 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

THE GOVERNMENT'S FINAL SUBMISSIONS TO THE COURT

57. In their memorial of 16 March 1990 the Government invited the Court "to hold that Article 6 para. 1 (art. 6-1) of the Convention does not apply to the proceedings in question".

AS TO THE LAW

58. According to Mr Moreira de Azevedo, the duration of the criminal proceedings instituted against his assailant in the Vila Nova de Famalicão First-Instance Court exceeded the reasonable time referred to in Article 6 para. 1 (art. 6-1), 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 ...".

59. The Government contended primarily that the application was inadmissible on the ground of a failure to exhaust domestic remedies. In the alternative, they argued that Article 6 para. 1 (art. 6-1) was not applicable.

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

60. Before the Commission the Government had lodged a preliminary objection divided into four limbs, but before the Court they repeated, and set out the grounds for, only one of them. Having regard to Rule 48 para. 1 of the Rules of the Court, the other three do not call for a decision as the Court may not examine them of its own motion (see, *inter alia*, the *Duijnhof and Duijf* judgment of 22 May 1984, Series A no. 79, p. 14, para. 30).

61. The submission re-iterated in the memorial of March 1990 and at the hearing of 23 May is to the effect that the applicant ought to have brought civil proceedings, pursuant to Article 30 of the Code of Criminal Procedure (see paragraph 53 above), separately from the criminal proceedings.

Such proceedings would however have dealt with the substantive issue in dispute before the Portuguese courts, Mr Moreira de Azevedo's right to compensation, and not the only complaint relied upon by him in Strasbourg, namely the failure to complete the proceedings within a "reasonable time". Article 26 (art. 26) of the Convention requires remedies to be exercised only in so far as they relate to the violations complained of before the organs whose task it is to ensure the observance of the Convention (see, among many other authorities, the *Ciulla* judgment of 22 February 1989, Series A no. 148, p. 15, para. 31). In addition, it would be pointless to speculate as to

whether such proceedings would have led to a decision being given more rapidly, because in any event they constituted a remedy too indirect to be taken into consideration (see, *mutatis mutandis*, the *Deweer* judgment of 27 February 1980, Series A no. 35, pp. 17 and 18, paras. 29 in fine and 31).

The objection must therefore be dismissed.

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

62. Before making any ruling on the alleged violation of Article 6 para. 1 (art. 6-1), the Court has to decide whether that provision is applicable.

A. Applicability of Article 6 para. 1 (art. 6-1)

63. According to the Government, there is no sign in the contested proceedings of any "contestation" (dispute) concerning the applicant's "civil rights and obligations". Mr Moreira de Azevedo had never claimed compensation for the damage sustained inasmuch as the status of *assistente* was not equivalent to the submission of such a claim. Only an express application lodged at the same time as the indictment, or within the time-limit in which the indictment could be drawn up, would have constituted objective evidence of an intention to claim compensation.

64. Mr Moreira de Azevedo argued, on the other hand, and he referred to the case-law of the Supreme Court (see paragraph 54 above), that a statement expressing a wish to intervene as *assistente* in itself incorporated an implied claim for financial reparation. In support of this view he cited his request that the decision as to the amount of damages be deferred until the subsequent enforcement proceedings (see paragraph 46 above).

65. The Commission took the view that the applicant had never asserted his civil rights by filing a formal claim for compensation in the criminal proceedings, as was required under Article 32 of the Code of Criminal Procedure. It considered that the guarantees secured under Article 6 para. 1 (art. 6-1) of the Convention did not apply to situations in which, following a conviction, the court awarded a sum of money, of its own motion; it therefore concluded that Article 6 para. 1 (art. 6-1) was not applicable.

66. In the Court's opinion, the right to a fair trial holds so prominent a place in a democratic society that there can be no justification for interpreting Article 6 para. 1 (art. 6-1) of the Convention restrictively.

Conformity with the spirit of the Convention requires that the word "contestation" should not be construed too technically and that it should be given a substantive rather than a formal meaning. Besides, it has no counterpart in the English text of Article 6 para. 1 (art. 6-1) ("in the determination of his civil rights and obligations"; cf. Article 49 (art. 49): "dispute" - see, *mutatis mutandis*, the *Le Compte, Van Leuven and De Meyere* judgment of 23 June 1981, Series A no. 43, p. 20, para. 45).

In so far as the French word "contestation" would appear to require the existence of a dispute, if indeed it does so at all, the facts of the case show that there was one.

In any event, the case concerned the determination of a right; the result of the proceedings was decisive for that right (see the above-mentioned judgment, p. 21, para. 46).

67. The impact on civil proceedings of the status of assistente, which attached to the applicant during the criminal proceedings, is the subject of controversy among Portuguese legal writers. Clearly the applicant could have used the right made available to him under Article 32 of the Code of Criminal Procedure to submit a formal claim for damages, but the Court cannot disregard the principles laid down by the Supreme Court in its "ruling" judgment (assento) of 28 January 1976 (see paragraph 54 above). In the light of these principles it appears that to intervene as an assistente is equivalent to filing a claim for compensation in civil proceedings.

By acquiring this status, Mr Moreira de Azevedo demonstrated the importance which he attached not only to the criminal conviction of the accused but also to securing financial reparation for the damage sustained. Moreover, his application that the decision as to quantum be deferred until the subsequent enforcement proceedings (see paragraph 46 above) confirms that he genuinely expected to be paid damages.

68. In conclusion, Article 6 para. 1 (art. 6-1) applies to this case.

B. Compliance with Article 6 para. 1 (art. 6-1)

1. Period to be taken into consideration

69. According to the applicant, the proceedings lasted nine years. The Government maintained that they had begun on 24 January 1977 with the decision of the investigating judge ordering the provisional release of Mr Gonçalves de Sousa and were concluded on 7 May 1986 when the Supreme Court adopted its judgment.

70. The Court notes that the incident in question took place on 23 January 1977 and that the accused was arrested and interviewed on the same date. However, the period to be considered did not begin to run at that date, but on 9 November 1978, when the Convention entered into force with regard to Portugal (see the Neves e Silva judgment of 27 April 1989, Series A no. 153, p. 15, para. 40). In order to determine the reasonableness of the time which elapsed after that date it is, however, necessary to take into account the stage which the proceedings had reached at that point.

The relevant period ended on 11 May 1986, the third day following the despatch of the letter of notification to the applicant (Article 1 para. 3 of Legislative Decree no. 121/76 of 11 February 1976).

2. Reasonableness of the length of the proceedings

71. 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, in particular the complexity of the case, the conduct of the applicant and that of the relevant authorities (see, *inter alia*, the *H. v. France* judgment of 24 October 1989, Series A no. 162, p. 21, para. 50).

72. It is common ground between the participants in the proceedings before the Court that the dispute was not a complex one; however, their views differ with regard to the conduct of the applicant and that of the judicial authorities.

According to the Government, Mr Moreira de Azevedo did not take the steps necessary to expedite the proceedings and displayed a passivity which reflected acceptance of their length. This the applicant disputed.

The Court observes that the investigation conducted between 23 January 1977 and 5 July 1984 was secret and that the applicant did not have free access to the file (see paragraph 52 above).

In any event the applicant was under no duty to take the steps referred to by the Government; moreover, they would not have shortened the proceedings (see, *mutatis mutandis*, the *Guincho* judgment of 10 July 1984, Series A no. 81, p. 15, para. 34).

73. It remains to examine the conduct of the relevant Portuguese courts.

The applicant ascribed the length of the proceedings to the defective functioning of the system of justice. In his view, the respondent State was alone responsible for this situation and could not hide behind the delays of the hospital authorities.

For their part, the Government stressed that no major problems arose in the course of the preliminary inquiry, apart from the time taken for the medical examinations. Although they conceded that there were certain delays in the investigation and that it made no progress whatsoever from 26 May 1980 until 5 July 1982, they argued that the investigation authorities were at the time experiencing a difficult period of re-organisation, but that prompt and adequate measures had been decided in 1982 (amendment of the Constitution) and 1987 (adoption of a new Code of Criminal Procedure). Finally, they maintained that the responsibility for the lack of efficiency of the departments of the Oporto medical faculty could not be attributed to the judicial authorities.

In the opinion of the Commission's Delegate, there could be no doubt that the "reasonable time" had been exceeded. The proceedings had scarcely progressed from 26 May 1980 to 5 July 1982, and the time taken to complete the medical examinations of the applicant was excessive.

The Court shares this view and notes that the State is responsible for all its authorities and not merely its judicial organs (see, among other

authorities, the Martins Moreira judgment of 26 October 1988, Series A no. 143, p. 21, para. 60).

74. By requiring that cases be heard "within a reasonable time", the Convention stresses the importance of administering justice without delays which might jeopardise its effectiveness and credibility (see, *inter alia*, the *H. v. France* judgment, cited above, pp. 22-23, para. 58).

The Court is not unaware of the difficulties which sometimes delay the hearing of cases by national courts and which are due to a variety of factors. It is mindful of the reforms carried out by the Portuguese State as regards the organisation of the investigation authorities. Nevertheless it finds that the Government have failed to show what practical and effective measures Portuguese law provided in the present case to accelerate the progress of the criminal proceedings.

75. In conclusion the "reasonable time" was exceeded and there was accordingly a violation of Article 6 para. 1 (art. 6-1).

III. APPLICATION OF ARTICLE 50 (art. 50)

76. According to Article 50 (art. 50) of the Convention,

"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 Moreira de Azevedo sought both the award of compensation and the reimbursement of costs and expenses.

77. The applicant claimed 8,000,000 escudos in respect of pecuniary damage and 2,000,000 for non-pecuniary damage. He had, he alleged, been prevented from pursuing his occupation and no longer received his salary as a bus driver, which had been 60,000 escudos. Furthermore, the slowness of the Portuguese courts meant that he had been unable to obtain compensation from Mr Gonçalves de Sousa. He was physically and mentally destroyed and his incapacity to work was at least 75%. He suffered from permanent after-effects due to the loss of a part of his skull and to "subjective damage to the encephalic mass".

For his part, the Commission's Delegate took the view that if the Court found a breach of Article 6 para. 1 (art. 6-1), the applicant would be entitled to compensation for the non-pecuniary damage flowing from the protracted uncertainty and anxiety concerning the outcome of the proceedings. He expressed no view on the pecuniary damage.

78. While taking into account the fact that he had received legal aid before the Convention organs, Mr Moreira de Azevedo claimed the reimbursement of costs and expenses referable to the European proceedings.

He assessed the lawyers' fees at 500,000 escudos and travel and subsistence expenses at 72,000 escudos.

The Commission's Delegate considered that, if a violation were found, the applicant would be entitled to the reimbursement of expenses actually and necessarily incurred by him to prevent the breach, or have it redressed, both in the domestic legal system and at the European level. However, he did not give any figures as to quantum.

79. The Government have not taken any stand on the matter and the Court does not yet have at its disposal certain information which it requires to make an assessment, and in particular appropriate supporting documents. The question is thus not ready for decision. Accordingly, it should be reserved and the subsequent procedure fixed, taking into account the possibility of an agreement between the respondent State and the applicant (Rule 54 paras. 1 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary objection;
2. Holds that Article 6 para. 1 (art. 6-1) applied to the present case and that it was violated;
3. Holds that the question of the application of Article 50 (art. 50) is not ready for decision;

Accordingly

- (a) reserves it in whole;
- (b) invites the Government and the applicant to submit to it in writing within the next three months their observations on the question and in particular to communicate to it any agreement which they may reach;
- (c) reserves the subsequent procedure and delegates to the President of the Court power to fix the same if need be.

Done in English and in French and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 October 1990.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar