



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

COURT (CHAMBER)

CASE OF VALLEE v. FRANCE

(Application no. 22121/93)

JUDGMENT

STRASBOURG

26 April 1994

In the case of Vallée v. France*,

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. MATSCHER,

Mr L.-E. PETTITI,

Mr B. WALSH,

Mr N. VALTICOS,

Sir John FREELAND,

Mr D. GOTCHEV,

Mr B. REPIK,

Mr K. JUNGWIERT,

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

Having deliberated in private on 24 March and 19 April 1994,

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 20 January 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. 22121/93) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr Alain Vallée, on 9 June 1993.

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 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

* Note by the Registrar. The case is numbered 2/1994/449/528. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

the proceedings 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 28 January 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mr B. Walsh, Mr N. Valticos, Sir John Freeland, Mr D. Gotchev, Mr B. Repik and Mr K. Jungwiert (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

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 memorial on 9 February 1994 and the Government's memorial on 24 February.

5. On 10 March 1994 the Commission produced the documents in the proceedings conducted 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 22 March 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mrs M. MERLIN-DESMARTIS, administrative court judge,
on secondment to the Legal Affairs Department, Ministry
of Foreign Affairs, *Agent*,

Mrs H. KHODOSS, Assistant Director for the health system
and the quality of health care at the General Department of
Health, Ministry of Social Affairs, Health and Urban
Affairs,

Mr P. BRUNET, Secretary-General of the Compensation Fund
for HIV-infected Transfusion Patients and
Haemophiliacs,

Mrs O. DORION, Ethics and Law Office,
Health-Care Professions Section, General Department of
Health, Ministry of Social Affairs, Health and Urban
Affairs,

Mr P. TITIUN, magistrat
on secondment to the Legal Affairs Department, Ministry
of Foreign Affairs, *Counsel*;

- for the Commission

Mr J.-C. GEUS, *Delegate*;

- for the applicant

Mr J.-A. BLANC, avocat

at the Conseil d'Etat and the Court of Cassation, *Counsel*.

The Court heard addresses by Mrs Merlin-Desmartis, Mr Geus and Mr Blanc and also their replies to its questions.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. Mr Alain Vallée, a French national born in 1964, is an inspector of electronic equipment with an annual salary of about 80,000 French francs (FRF), but he often has to take sick-leave.

8. He was infected with the human immunodeficiency virus (HIV) between 27 November 1984 and 4 June 1985. As a severe A-haemophiliac he had received frequent blood transfusions. As early as October 1987 he was classified as having reached stage IV, the last stage of infection, on the scale of the Atlanta Center for Disease Control.

9. Mr Vallée is one of five brothers, all infected with the human immunodeficiency virus. Being unaware that he was HIV-positive, he infected his girlfriend.

A. The applications for compensation

1. The preliminary application to the administrative authority

10. On 12 December 1989 the applicant submitted a preliminary claim for compensation to the Minister for Solidarity, Health and Social Protection, in accordance with Article R.102 of the Administrative Courts and Administrative Courts of Appeal Code (see paragraph 25 below). He sought FRF 2,500,000, maintaining that he had been infected with the human immunodeficiency virus as a result of the Minister's negligent delay in implementing appropriate rules for the supply of blood products.

Six hundred and forty-nine similar claims were sent to the Minister; the number of haemophiliacs who had been infected was one thousand two hundred and fifty.

11. On 30 March 1990, shortly before the expiry of the statutory four-month time-limit (see paragraph 25 below), the Director-General for Health rejected the applicant's claim.

2. The application to the administrative courts

12. On 31 May 1990 Mr Vallée lodged an application with the Versailles Administrative Court for the annulment of the ministerial decision and for compensation from the State in the amount of FRF 2,500,000 plus statutory interest. On 11 October he submitted a supplementary memorial.

The Minister filed his defence pleadings on 22 April 1991. In them he called on the court to "dismiss the applicant's claim" but added:

"However, in the event of the court's accepting the principle of negligence on the part of the State, I would ask you to appoint an expert with a view to establishing whether the damage for which the applicant seeks compensation is genuinely attributable to such negligence."

13. Under an order of 11 July 1991 transferring jurisdiction, made pursuant to Article R.80 et seq. of the Administrative Courts and Administrative Courts of Appeal Code, the case was referred to the Paris Administrative Court, which had been designated to deal with all the applications lodged against the State by infected haemophiliacs.

(a) The investigation (instruction)

14. On 2 January 1992 the Paris Administrative Court sent the applicant's lawyer an official request for information, asking him to indicate the date on which the applicant had learned he was HIV-positive and his current state of health. Although he had already provided a copy of his haemophiliac's health record with his supplementary memorial of 11 October 1990, Mr Vallée immediately sent the court a memorial together with a medical certificate, which summarised the situation as follows:

"Subject to any new developments, the last negative result in a serological test was recorded in June 1984 and the first positive result in June 1985. Since these results were obtained with first-generation tests, a serological control is being performed using serum-bank samples taken on 18 September 1984, 27 November 1984 and 4 June 1985.

From a clinical point of view, the patient's general state of health is good but he was assigned to group IV C II of the CDC classification on account of herpes zoster, which he contracted in October 1987. The last checkup performed in February 1992 also revealed skin mycosis. From a biological point of view, his CD4+ lymphocyte count is 274 per mm³. The patient is not receiving any special treatment at present. Rétrovir should shortly be prescribed."

To supplement the information given in the medical certificate the applicant also indicated in his memorial that:

"The Centre Air et Soleil run by Dr Congard did not prescribe any blood transfusions from September 1984 to 23 November 1985.

However, except for serious incidents, for which he received treatment at the centre, Mr Vallée effected transfusions himself at home, and his haemophiliac's health record

(see exhibit no. 13 to the supplementary memorial) shows that he injected himself with PPSB on 18 April, 28 April, 18 May and 24 May 1985.

There are accordingly sufficiently serious, precise and concurring grounds for supposing that Mr Alain Vallée was infected between 12 March and 1 October 1985."

15. The case was set down for hearing on 16 March 1992. On 25 March the court gave an interlocutory decision as follows:

" ... The State is liable in respect of haemophiliacs who were infected with HIV in the course of transfusion of non-heat-treated blood products during the period of liability defined above, that is between 12 March and 1 October 1985."

It also ordered the applicant to send it "the results of the serological tests performed on the blood samples taken on 18 September 1984, 27 November 1984 and 4 June 1985".

The decision was served on Mr Vallée two months later. On 10 June 1992 he filed a memorial to which the documents requested were appended.

16. A hearing took place on 20 January 1993. In his submissions the Government Commissioner (commissaire du gouvernement) recommended that the court should order the State to pay the applicant compensation of FRF 2,200,000, plus interest at the statutory rate from 13 December 1989. This amount was higher than the sum of FRF 2,000,000 normally awarded to persons who had reached stage IV of the illness, to take into account the fact that all of Mr Vallée's brothers had likewise been infected and that he himself had been infected while still very young.

On 15 April 1993 the applicant's lawyer wrote to the President of the court to express his concern that no judgment had yet been served on his client.

A further hearing was held on 30 April 1993.

(b) The judgment of 28 May 1993

17. On 28 May 1993 the Paris Administrative Court gave the following judgment:

"The State's liability

...

The investigation has shown that on 27 November 1984 Mr Vallée did not have any antibodies revealing the presence of human immunodeficiency virus and that he was found to be HIV-positive on 4 June 1985 after having undergone transfusions of non-heat-treated blood products in April and May 1985; the State is accordingly liable vis-à-vis the applicant for the damage suffered as a result of the transfusions he received between 12 March and 1 October 1985;

Mr Vallée will be adequately compensated for all his problems by an award of FRF 2,000,000;"

In the same decision the court - acting under section 12 of the Act of 31 December 1987 (see paragraph 26 below) - referred the case to the Conseil d'Etat for an opinion on a point of law concerning the application Mr Vallée had made concurrently to the Compensation Fund (see paragraph 24 below). It accordingly deferred its final decision until the Conseil d'Etat had given its opinion or, if no opinion was forthcoming, until three months after the date on which the file was forwarded to the Conseil d'Etat.

The judgment was served on Mr Vallée on 11 June 1993, and the file was transmitted to the Conseil d'Etat the same day.

(c) The opinion of the Conseil d'Etat

18. On 25 June 1993 the applicant filed a memorial. His main submission was that the request for an opinion was inadmissible; in the alternative he pointed out that an opinion was not necessary because the issue had already been determined by the Conseil d'Etat.

On 16 September 1993, since the Conseil d'Etat had not given its opinion within the statutory time-limit, Mr Vallée requested the Administrative Court to give judgment without further delay.

On 15 October 1993 the Conseil d'Etat gave the following opinion:

"1. The decree of 12 July 1993 ..., which is applicable to cases pending at the date of its publication, ... provides a solution to the problem raised in the Administrative Court's first question.

2. ... An administrative court asked to make such an award should raise of its own motion the fact that the damage complained of has already been wholly or partly indemnified by a third party, when the evidence shows this to be the case, even if that party does not file submissions, on the basis of its subrogation to the rights of the victim, seeking the reimbursement of the amounts it has paid as compensation for the damage suffered by the latter.

Accordingly, an administrative court to which a claim for compensation for damage suffered as a result of infection with the human immunodeficiency virus has been submitted must, when it has been informed by one of the parties that the victim or his heirs have already received compensation for the damage complained of, deduct of its own motion such compensation from the amount payable in respect of the damage.

...

Where the sum offered by the Fund has been accepted by the claimants, or where a sum has been fixed in a judgment of the Paris Court of Appeal, against which no appeal on points of law has been lodged, or again where an appeal on points of law against the Court of Appeal's judgment has been dismissed by the Court of Cassation, it should be held that all or part of the damage complained of has been actually and finally compensated by the Fund. Consequently it is incumbent on an administrative court which has been informed that this is the case to deduct, of its own motion, the amount thus owed by the Fund from the compensation which it orders the public authority liable for the damage to pay to the victim."

(d) The judgment of 5 January 1994

19. The Paris Administrative Court held a further hearing on 8 December 1993. On 5 January 1994 it gave the following decision:

"Article 1: The State is ordered to pay Mr Vallée the sum of FRF 548,000.

Article 2: This amount shall bear interest from 13 December 1989 at the statutory rate. The sum of FRF 1,352,000 paid to Mr Vallée by the Compensation Fund for Transfusion Patients and Haemophiliacs shall bear interest at the statutory rate from the same date until 27 November 1992.

Article 3: The interest due on the FRF 548,000 as at 12 March 1992 and 20 September 1993 shall be capitalised on each of those dates so that it also bears interest. The interest due on the FRF 1,352,000 as at 12 March 1992 shall be capitalised on that date so that it also bears interest until 27 November 1992.

Article 4: The State shall be subrogated to the rights of Mr Vallée vis-à-vis any party acknowledged to have jointly caused the damage for which reparation is made in this judgment.

..."

The judgment was served on Mr Vallée on 4 March 1994. The time-limit for filing an appeal will expire on 4 May 1994. At the date of the adoption of the present judgment, the applicant had not appealed to the Paris Administrative Court of Appeal.

B. The claim submitted to the Compensation Fund

20. On 3 March 1992 Mr Vallée submitted a claim to the Compensation Fund set up by the Act of 31 December 1991 (see paragraph 24 below).

On 15 July 1992 the Fund offered him as "HIV-infection compensation" a sum of FRF 1,452,000, payable in three instalments over a period of three years, from which FRF 100,000 paid out by the private haemophiliacs' solidarity fund was to be deducted. In addition the applicant was to receive a sum of FRF 484,000 as soon as he developed AIDS (acquired immunodeficiency syndrome).

21. The applicant turned down this offer and appealed to the Paris Court of Appeal under section 47 VIII of the Act of 31 December 1991.

In a judgment of 27 November 1992 that court decided that the HIV-infection compensation should be paid in a single instalment. On the other hand, it upheld the Fund's decision to pay the "AIDS compensation" of FRF 484,000 only at a later date.

On 18 December 1992 the Fund sent the applicant a cheque for FRF 1,364,170.21.

22. Mr Vallée appealed on points of law, seeking a declaration that it was unlawful to defer payment of the "AIDS compensation". The Court of Cassation dismissed the appeal on 20 July 1993.

C. The application to join the criminal proceedings as a civil party

23. On 22 June 1992 Mr Vallée applied to the Paris Criminal Court to be joined as a civil party to the proceedings at the trial of certain senior officials of the blood transfusion service.

On 23 October 1992 the court awarded him FRF 300,000 as compensation for deception as to the quality of the products.

Mr Vallée appealed against the judgment but subsequently withdrew his appeal.

II. THE COMPENSATION MACHINERY

24. The Act of 31 December 1991 making miscellaneous social-welfare provisions set up special machinery for the compensation of haemophiliacs and transfusion patients who had been infected following injections of blood products. Section 47 provides:

"I. Victims of damage resulting from infection with the human immunodeficiency virus caused by transfusion of blood products or injection of blood derivatives carried out within the territory of the French Republic shall be compensated in the manner set out below.

II. ...

III. Full compensation for the damage defined in subsection I shall be provided by a Compensation Fund, having legal personality, presided over by a serving or retired divisional president or judge of the Court of Cassation and administered by a compensation board.

...

IV. In their claims for compensation, victims or their heirs shall provide proof of their infection with the human immunodeficiency virus and of the transfusion of blood products or injections of blood derivatives.

...

Victims or their heirs shall communicate to the Fund all the information in their possession.

Within three months of the receipt of a claim, a period which may be extended at the request of the victim or his heirs, the Fund shall consider whether the conditions for payment of compensation have been fulfilled. It shall investigate the circumstances under which the victim was infected and make any necessary inquiries, which may not be resisted on grounds of professional secrecy.

...

V. The Fund shall be required to make an offer of compensation to any victim referred to in subsection I within a time-limit laid down by decree, which may not exceed six months from the day on which the Fund receives full proof of the damage

...

...

VI. The victim shall inform the Fund of any judicial proceedings pending. If legal proceedings are brought, the victim shall inform the court of his application to the Fund.

VII. ...

VIII. The victim shall not be entitled to take legal action against the Compensation Fund unless his claim for compensation has been dismissed, no offer has been made to him within the time-limit referred to in the first paragraph of subsection V, or he has not accepted an offer made to him. Proceedings shall be brought in the Paris Court of Appeal.

IX. The Fund shall be subrogated, for an amount no higher than the sums paid out, to the victim's rights against the person liable for the damage and against persons required, for whatever reason, to make full or partial reparation for that damage, within the limits of those persons' liabilities. However, the Fund may institute proceedings on the basis of that subrogation only where the damage is attributable to negligence.

The Fund may intervene in proceedings in the criminal courts, even if it does not do so until the appeal stage, where the victim or his heirs have claimed compensation as a civil party in proceedings pending against the person or persons responsible for the damage defined in subsection I. In such cases it shall be considered a full party to the proceedings and may have recourse to all the remedies available in law.

If the acts which caused the damage have given rise to criminal proceedings, the civil court shall not be required to defer its decision until there has been a final decision by the criminal court.

X. Unless otherwise provided, the provisions governing the implementation of this section shall be laid down in a decree issued after consultation of the Conseil d'Etat.

XI. ...

XII. The Compensation Fund's sources of revenue shall be specified in a subsequent Act.

XIII. ...

XIV. ..."

III. THE RELEVANT PROCEDURAL LAW

A. The rules applicable at the material time

25. At the material time the Administrative Courts and Administrative Courts of Appeal Code contained, inter alia, the following provisions:

Article R.102

"Except in cases concerning public works, proceedings may not be instituted in the Administrative Court otherwise than in the form of an appeal against a decision; such an appeal shall be lodged within two months of the notification or the publication of the contested decision.

Where no reply is forthcoming from the relevant authority for more than four months, that silence is to be construed as a decision rejecting the complaint.

..."

Article R.129

"The President of the Administrative Court or of the Administrative Court of Appeal, or a judge delegated by one of them, may, where the existence of an obligation cannot seriously be contested, award an advance to a creditor who has filed an application on the merits in the court in question. He may, even of his own motion, make the payment of the advance subject to the lodging of a security."

Article R.142

"Immediately after the application instituting the proceedings has been registered by the registry, the president of the court or, in Paris, the president of the division to which the application has been transmitted, shall appoint a rapporteur.

Under the authority of the president of the court or division to which he belongs, the rapporteur shall, regard being had to the circumstances of the case, fix the time-limit to be given, if necessary, to the parties for the production of supplementary pleadings, observations, statements of defence or replies. He may request the parties to supply any evidence or documents relevant to the resolution of the dispute, which shall be added to the file so as to be accessible to all the parties."

Article R.182

"A member of the Administrative Court or the Administrative Court of Appeal may be assigned by the competent court or by the latter's president to carry out any investigative measures other than those provided for in sections 1 to 4 of this chapter."

26. Section 12 of the Act of 31 December 1987 on the reform of the organisation and functioning of the administrative courts provides as follows:

"Before giving a decision on an application which raises a new point of law of particular difficulty arising in a large number of cases, the Administrative Court or Administrative Court of Appeal may, by a decision from which no appeal lies, transfer the case file to the Conseil d'Etat, which shall examine the point at issue within three months. The decision on the merits shall be deferred until the Conseil d'Etat has given its opinion or, if no opinion is forthcoming, until the expiry of this time-limit."

B. The current rules

27. Decree no. 93-906 of 12 July 1993 applies to all proceedings pending at the date of its publication. It lays down provisions for the implementation of section 47 of the Act of 31 December 1991 (see paragraph 24 above):

"Part II

Provisions relating to actions seeking to establish liability brought against those responsible for the damage defined in subsection I of section 47 of the aforementioned Act of 31 December 1991

Article 15

In order to bring the action by subrogation provided for in subsection IX of section 47 of the aforementioned Act of 31 December 1991, the Fund may intervene in proceedings in any of the administrative or ordinary courts, even if it does not do so until the appeal stage. In such cases it shall be considered a full party to the proceedings and may have recourse to all the remedies available in law.

Article 16

The registries of the administrative and ordinary courts shall send the Fund by registered post with recorded delivery a copy of the procedural documents submitting to those courts any initial or additional claim for compensation of the damage defined in subsection I of section 47 of the aforementioned Act of 31 December 1991.

Article 17

Within one month of receipt of the letter referred to in Article 16, the Fund shall inform the president of the relevant court by ordinary mail whether or not it has received a claim for compensation with the same purpose and, if so, what stage the procedure has reached. It shall also state whether or not it intends to intervene in the proceedings.

Where the victim has accepted the offer made by the Fund, the latter shall send the president of the court a copy of the documents in which the offer was made and by which it was accepted. The Fund shall, where relevant, indicate the stage reached in

proceedings instituted in the Paris Court of Appeal under the provisions of Part I of this decree and forward any judgment delivered by that court.

The registry shall notify the parties of the information communicated by the Fund.

Article 18

The registry shall send the Fund copies of the decisions given at first instance and, where relevant, on appeal in proceedings in which the Fund has not intervened.

Article 19

...

Article 20

The provisions of Articles 15 to 19 shall be applicable to cases pending on the date of entry into force of [this] decree ..."

PROCEEDINGS BEFORE THE COMMISSION

28. Mr Vallée applied to the Commission on 9 June 1993, alleging that his case had not been heard within a reasonable time as required under Article 6 para. 1 (art. 6-1) of the Convention.

29. The Commission declared the application (no. 22121/93) admissible on 20 October 1993. In its report of 7 December 1993 (made under 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 reproduced as an annex to this judgment*.

GOVERNMENT'S FINAL SUBMISSIONS TO THE COURT

30. In their memorial the Government requested the Court to dismiss Mr Vallée's application.

* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 289-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

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

31. Mr Vallée complained of the time taken to hear the claim for compensation which he had lodged against the State. He alleged a violation 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 ..."

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

32. The applicant and the Commission both considered that Article 6 para. 1 (art. 6-1) was applicable in the instant case, and the Government did not dispute this.

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

1 Period to be taken into consideration

33. The period to be taken into consideration began on 12 December 1989, when the applicant lodged his preliminary claim for compensation with the Minister for Solidarity, Health and Social Protection (see paragraph 10 above). It has not yet ended, as the time-limit for filing an appeal against the judgment adopted by the Paris Administrative Court on 5 January 1994 and served on 4 March 1994 does not expire until 4 May 1994 (see paragraph 19 above). To date it has therefore already lasted more than four years.

2. Reasonableness of the length of the proceedings

34. The reasonableness of the length of proceedings is to be assessed in the light of the 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 and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant in the litigation has to be taken into account (see the *X v. France* judgment of 31 March 1992, Series A no. 234-C, p. 90, para. 32).

(a) Complexity of the case

35. According to the applicant, the case was not at all complex, because the principles governing the State's liability for the infection of

haemophiliacs had been clear since the judgment given on 20 December 1991 by the Paris Administrative Court in plenary session. The exercise by the Compensation Fund of its right of subrogation was a simple matter and had not necessitated any regulatory or judicial intervention.

36. The Government pointed out the difficulties and uncertainties that faced the courts before which the first compensation proceedings were brought, until the Assembly of the Conseil d'Etat adopted its judgment of 9 April 1993 establishing the basis of the State's liability. They also maintained that the request for an opinion submitted to the Conseil d'Etat had been necessary to clarify the relationship between the litigation and the compensation available under the new Act.

37. The Commission acknowledged that difficult problems had been raised by the subrogation of the Fund to the rights of persons who had received compensation. It considered, however, that such problems had been foreseeable as soon as the Fund was set up by the Act of 31 December 1991 and that therefore a solution could probably have been found earlier.

38. In the Court's opinion, even if the case was of some complexity, the information needed to determine the State's liability had been available for a long time (see the *X v. France* judgment previously cited, p. 91, para. 36). In any event, the court could have sought the opinion of the Conseil d'Etat earlier in the proceedings.

In addition, the problems raised by the existence of two parallel sets of proceedings in the administrative courts and before the Compensation Fund cannot justify the length of the proceedings in question.

(b) The applicant's conduct

39. The Government contended that the interlocutory decision of 25 March 1992 had been necessary because of the conduct of Mr Vallée, who had allegedly failed to produce documents proving his infection.

40. The applicant denied having contributed in any way at all to slowing down the proceedings and criticised the decision in question as dilatory. He had already provided the relevant information with his supplementary memorial of 11 October 1990 and had supplied a medical certificate in response to the court's first request of 2 January 1992 (see paragraph 14 above). In any case, if the court had wished to obtain the results of the serological tests, it could have done so in a far more direct and rapid manner.

41. Like the Commission, the Court notes that the documents were requested twenty-two months after the proceedings had been instituted and that the Government did not accuse the applicant of any delay in producing the information requested.

(c) The conduct of the national authorities

(i) The administrative authorities

42. Mr Vallée criticised the relevant minister for his slowness in submitting his replies and his statements in defence; he had taken three and a half months to respond to the preliminary claim and six months to file pleadings in the court proceedings (see paragraphs 11 and 12 above). In addition, Mr Vallée considered that the one and a half year period between the publication of the Act of 31 December 1991 and that of the implementing decree of 12 July 1993 had been unacceptable (see paragraphs 24 and 27 above).

43. The Government, however, maintained that the public authorities had been prompt to afford compensation to victims infected by blood transfusions, in particular through the Fund set up by the Act of 31 December 1991.

44. Like the Commission, the Court accepts Mr Vallée's submission in substance.

(ii) The administrative courts

45. In Mr Vallée's view, regard being had to his tragic situation, his case was particularly badly handled. Four hearings were held, on 16 March 1992, 20 January 1993, 30 April 1993 and 8 December 1993, before judgment was given on 5 January 1994 and served on 4 March 1994 (see paragraphs 15, 16 and 19 above).

Despite the Fund's award of FRF 1,364,170.21 on 18 December 1992, what was at stake in the proceedings in the administrative courts remained of great importance in terms of the compensation he could expect in respect of both non-pecuniary and additional pecuniary damage, and, indeed, in the judgment of 5 January 1994 he was awarded FRF 1,292,747 (see paragraphs 19 and 21 above).

46. The Government maintained, on the contrary, that the circumstances of the case differed from those in *X v. France*. The Fund's award of compensation while the proceedings were pending reduced the importance of what was at stake in the dispute, which, in pecuniary terms, thereafter had concerned only a residual amount.

47. Like the Commission, the Court considers that what was at stake in the contested proceedings was of crucial importance for the applicant in view of the incurable disease from which he is suffering and his reduced life expectancy. He was infected in 1985 and as early as 1987 was classified as having reached stage IV, the last stage of infection (see paragraph 8 above). In short, exceptional diligence was called for in this instance, notwithstanding the number of cases which were pending, in particular as it was a controversy the facts of which had been known to the Government for

several years and the seriousness of which must have been obvious to them (see the X v. France judgment previously cited, p. 94, para. 47).

Yet the Administrative Court did not use its powers to expedite the proceedings, although it was aware of the X v. France judgment and of Mr Vallée's state of health.

48. In this connection, several periods appear to have been abnormally long:

(a) the twenty-two months between the application to the Versailles Administrative Court (31 May 1990) and the first hearing (16 March 1992) (see paragraphs 12 and 15 above);

(b) the seven months from the filing of the applicant's memorial (10 June 1992) to the second hearing (20 January 1993) (see paragraphs 15 and 16 above);

(c) the period of nearly five months which elapsed between the adoption of the Conseil d'Etat's opinion (15 October 1993) and the notification of the Administrative Court's judgment (4 March 1994) (see paragraphs 18 and 19 above).

49. Referring to its X v. France judgment, the Court reiterates that a period of more than four years to obtain a judgment in first-instance proceedings far exceeds a reasonable time in a case of this nature. Such a reasonable time had been exceeded even before the applicant was paid compensation by the Fund on 18 December 1992 (see paragraph 21 above). After that date, what was at stake in the proceedings in terms of compensation for both pecuniary and non-pecuniary damage continued to be of great importance for Mr Vallée.

In conclusion, there has been a violation of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

50. 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."

A. Damage

51. Mr Vallée claimed in the first place FRF 500,000 for non-pecuniary damage, calculated on the basis of the length of the proceedings - twice that of those in the X v. France case, in which the Court had awarded the victim of the violation FRF 150,000.

52. The Government considered the sum claimed excessive. In the event of the Court's finding a breach of the Convention, the non-pecuniary damage could, in their opinion, be assessed at FRF 50,000.

53. The Delegate of the Commission recommended the payment of compensation, but left it to the Court to determine the amount.

54. The Court finds that the applicant undeniably sustained non-pecuniary damage, but, unlike Mr X, he has already been awarded FRF 1,364,170.21 paid by the Compensation Fund on 18 December 1992. Taking into account the various relevant factors and making an assessment on an equitable basis in accordance with Article 50 (art. 50), it awards Mr Vallée FRF 200,000.

B. Costs and expenses

55. The applicant also claimed FRF 59,300 for costs and expenses incurred before the Convention institutions.

56. The Government did not contest this claim and the Delegate of the Commission supported the reimbursement sought.

57. The Court allows the applicant's claims in their entirety, regard being had to the evidence at its disposal and to its case-law in this field.

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 is to pay the applicant, within three months, 200,000 (two hundred thousand) French francs for damage and 59,300 (fifty-nine thousand three hundred) francs for costs and expenses;
3. Dismisses the remainder of the applicant's claims.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 26 April 1994.

Rolv RYSSDAL
President

For the Registrar
Herbert PETZOLD
Deputy Registrar