

In the case of *Demai 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 Rules of Court A**, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr L.-E. Pettiti,
Mr B. Walsh,
Mr R. Macdonald,
Mr R. Pekkanen,
Mr A.N. Loizou,
Sir John Freeland,
Mr G. Mifsud Bonnici,
Mr U. L hmus,

and also of Mr H. Petzold, Acting Registrar,

Having deliberated in private on 27 October 1994,

Delivers the following judgment, which was adopted on that date:

Notes by the Registrar

* The case is numbered 22/1994/469/550. 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.

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 7 July 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. 22904/93) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr Christian Demai, on 15 October 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 Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43

of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 18 July 1994, in the presence of the Acting Registrar, the President drew by lot the names of the other seven members, namely Mr B. Walsh, Mr R. Macdonald, Mr N. Valticos, Mr R. Pekkanen, Mr A.N. Loizou, Sir John Freeland and Mr G. Mifsud Bonnici (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr U. L hmus, substitute judge, replaced Mr Valticos, who was unable to take part in the further consideration of the case (Rules 22 paras. 1 and 2 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal consulted - through the Acting Registrar - the Agent of the French Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rule 37 para. 1).

5. Between 5 September and 5 October 1994 the Government, the applicant's lawyer and the Acting Registrar communicated with each other in writing or by telephone on a number of occasions in pursuit of a friendly settlement.

6. On 5 October 1994 the Government informed the Acting Registrar of the terms of an agreement concluded with the applicant, whose lawyer confirmed acceptance of it on the same day.

The Delegate of the Commission was consulted and raised no objection.

7. On 27 October 1994 the Court decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 26 and 38).

AS TO THE FACTS

8. Mr Christian Demai, a French national born in 1962, is a haemophiliac and has had frequent blood transfusions. A blood test on 22 July 1985 showed that he had been infected with the human immunodeficiency virus (HIV). He is currently classified as having reached stage II of infection on the scale of the Atlanta Center for Disease Control.

9. On 8 December 1989 the applicant submitted a preliminary claim for compensation to the Minister for Solidarity, Health and Social Protection, who refused it on 30 March 1990.

10. On 25 May 1990 Mr Demai lodged an application with the Versailles Administrative Court, seeking to have the ministerial decision quashed and to be awarded compensation by the State in the amount of 2,500,000 French francs (FRF) plus statutory interest. The Minister filed his defence on 22 April 1991.

11. On 24 July 1991 the Conseil d'Etat assigned the case to the Paris Administrative Court, the court designated to deal with all the applications lodged by infected haemophiliacs.

12. After a hearing on 8 April 1992 the court ruled on 22 April that the State was liable in respect of haemophiliacs who had been infected with HIV in the course of transfusion of non-heat-treated blood products between 12 March and 1 October 1985. It also ordered, in an interlocutory decision, that an expert should be appointed to determine, inter alia, whether the applicant had been infected during that period.

13. On 18 January and 8 March 1993 counsel for the applicant expressed concern to the Administrative Court that his client had still not been called by the expert. The expert examined Mr Demai on 8 April 1993 and filed his report on 30 July.

14. On 26 August 1993 the applicant filed his pleadings in the light of the expert's opinion.

15. Concurrently, on 8 October 1992, the Compensation Fund for Haemophiliacs and Transfusion Patients offered Mr Demai FRF 1,280,000, payable in three instalments over two years as "HIV-infection compensation", and FRF 460,000 as soon as he developed AIDS (acquired immunodeficiency syndrome).

The applicant accepted this offer and received FRF 426,667 in November 1992 and FRF 853,334 in January 1993.

On 19 November 1993 the Compensation Fund informed the Administrative Court of this and indicated that it did not intend to take part in the proceedings.

16. After a hearing on 16 February 1994 the Paris Administrative Court on 2 March 1994 awarded Mr Demai, *inter alia*, a sum of FRF 620,000 plus statutory interest. The judgment was served on the applicant on 18 April 1994 and no appeal was lodged against it.

PROCEEDINGS BEFORE THE COMMISSION

17. Mr Demai applied to the Commission on 15 October 1993. He alleged that his case had not been heard within a reasonable time as required by Article 6 para. 1 (art. 6-1) of the Convention.

18. The Commission declared the application (no. 22904/93) admissible on 9 March 1994. In its report of 18 May 1994 (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 the Commission's opinion 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 289-C 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

19. On 5 October 1994 the Court received from the French Ministry of Foreign Affairs a copy of a document signed by Mr Demai on 30 September 1994, which read as follows:

"I ... hereby declare that I accept the friendly settlement proposed to me by the French Government in the case pending in the European Court of Human Rights between me and that Government, subject to the following conditions:

payment of compensation of FRF 200,000;

payment of the costs and expenses incurred in the proceedings before the European Commission and Court of Human Rights, on production of the relevant vouchers, that is to say 23,720 francs inclusive of all taxes;

the whole to be paid within one month from the delivery of the Court's judgment.

I acknowledge that the payment of these sums will constitute full and final reparation for all the damage alleged in my application and will also cover in their entirety the lawyer's fees and other costs incurred by me in this case.

I therefore agree to withdraw from these proceedings and not to institute any further proceedings in this matter against the French State in the national or international courts.

I note that the French Government will take the necessary steps to implement the terms of the friendly settlement as soon as the Court has decided to strike the case out of its list.

..."

In a letter of 5 October 1994 to the Acting Registrar the applicant's lawyer confirmed that his client and the Government had agreed a settlement.

The Delegate of the Commission was consulted and raised no objection.

20. The Court takes formal note of the friendly settlement reached by the Government and Mr Demai. It discerns no reason of public policy why the case should not be struck out of the list (Rule 49 paras. 2 and 4 of Rules of Court A), especially as in the *X v. France, Vallée v. France* and *Karakaya v. France* judgments (31 March 1992, 26 April 1994 and 26 August 1994, Series A nos. 234-C, 289-A and 289-B) it has already established case-law in the matter.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 55 para. 2, second sub-paragraph, of Rules of Court A on 28 October 1994.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Acting Registrar