

In the case of *Marlhens v. France* (1),

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

Mr R. Ryssdal, President,  
Mr F. Gölcüklü,  
Mr L.-E. Pettiti,  
Mr R. Macdonald,  
Mr S.K. Martens,  
Mr F. Bigi,  
Sir John Freeland,  
Mr M.A. Lopes Rocha,  
Mr L. Wildhaber,

and also of Mr H. Petzold, Registrar,

Having deliberated in private on 23 May 1995,

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

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Notes by the Registrar

1. The case is numbered 22/1995/528/614. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

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

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PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 1 March 1995, 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. 22862/93) against the French Republic lodged with the Commission under Article 25 (art. 25) by Miss Isabelle Marlhens, a French national, on 29 September 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 she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 30).

3. On 26 April 1995 the applicant's lawyer communicated to the Registrar the terms of an agreement concluded between her

client and the French Government ("the Government"). The Government confirmed their acceptance two days later.

The Delegate of the Commission was consulted (Rule 49 para. 2). By letter of 15 May 1995 the Secretary to the Commission advised the Registrar that the Delegate had no comments to make.

4. 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. 4 (b)). On 5 May 1995, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr R. Macdonald, Mr S.K. Martens, Mr F. Bigi, Sir John Freeland, Mr M.A. Lopes Rocha and Mr L. Wildhaber (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

5. On 20 and 22 May 1995 the Agent of the Government and the applicant's lawyer provided further details of the costs and expenses incurred before the Convention institutions.

6. On 23 May 1995 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

7. Miss Isabelle Marlhens, a French national born in 1963, received a blood transfusion during an operation carried out at Pau Hospital in December 1982. At the beginning of 1988 it was discovered that she was infected with the human immunodeficiency virus (HIV). In July 1994 she was classified as having reached stage IV, the last stage of infection on the scale of the Atlanta Center for Disease Control. Tests carried out in December 1992 revealed that she was also a carrier of the hepatitis C virus.

8. On 9 April 1992 the applicant referred her case to the Compensation Fund for Haemophiliacs and Transfusion Patients (see, as the most recent authority, the *Karakaya v. France* judgment of 26 August 1994, Series A no. 289-B, pp. 38-39, para. 19). On 7 May 1992 the Fund asked her to produce certain documents and to fill in a medical questionnaire. On 11 May and 15 July 1992 Miss Marlhens sent the Fund the results of medical examinations and documents from her medical file. After ordering an additional inquiry whose results were known on 24 July 1992, the Fund rejected the applicant's claim on 28 October 1992 on the ground that no causal link between transfusion and infection could be established.

9. The applicant appealed against the above decision to the Paris Court of Appeal on 6 January 1993.

By an order of 4 May 1993 the President of the First Division set the case down for hearing on 30 June 1993 and requested the parties to submit their pleadings by 16 June 1993. On 21 May 1993 Miss Marlhens sent the Fund her pleading and requested the President of the First Division to grant her provisional legal aid. On 17 June 1993 the legal aid office directed her to supply a copy of the impugned decision, but sent this notice in a letter to her former address, which appeared on the documents annexed to the request submitted on 21 May 1993.

On 23 June 1993 the registry of the Court of Appeal received the Fund's pleading.

10. On 6 July 1993, acting in response to letters from the applicant, the President of the First Division ordered that pending a decision on the request for legal aid the hearing should be adjourned until 5 November 1993 and fixed 22 October as the final date for pleadings to be filed.

11. On 7 September 1993 the legal aid office rejected Miss Marlhens's request on the ground that she had not produced a copy of the impugned decision, as she had been asked to do in the letter of 17 June 1993. The applicant claimed that she had not received this letter and repeated her request for legal aid on 24 September, 5 October and 22 October 1993.

12. On 14 October 1993 the applicant sent a recapitulatory pleading to the President of the First Division and informed him that, thanks to the intervention of the Commission for Access to Administrative Documents, she had obtained crucial new evidence from Pau Hospital, consisting of two record-sheets concerning anaesthesia administered to her.

13. Miss Marlhens obtained provisional legal aid on 29 October 1993 and full legal aid on 2 November 1993.

14. By an order of 8 November 1993, rectified on 14 December, the President of the First Division fixed 30 December 1993 as the final date for pleadings to be filed and set the case down for hearing on 19 January 1994. Submissions were filed on the applicant's behalf on 21 December 1993.

On 2 February 1994, on an application made by the Fund at the hearing, the Court of Appeal ordered an expert opinion with a view to establishing the cause of infection. In the opinion, filed on 10 June 1994, the expert concluded that, although there was no certainty, the transfusion of December 1982 was "strongly suspected of being the cause" of the infection.

15. The Paris Court of Appeal gave judgment on 8 July 1994. Noting that the Fund no longer denied the existence of a causal link between the blood transfusions administered to Miss Marlhens and her infection, it awarded her compensation in the sum of 2,000,000 French francs (FRF), consisting of FRF 1,500,000 to be paid immediately and FRF 500,000 to be paid in the event of the onset of AIDS being confirmed by a medical report. It also ordered the Fund to pay FRF 5,000 in respect of expenditure incurred by the applicant but not included in her costs.

16. In a letter of 30 September 1994 the applicant informed the Secretariat of the Commission that in August 1994 the French authorities had acknowledged that she was now suffering from AIDS and had paid her FRF 500,000.

#### PROCEEDINGS BEFORE THE COMMISSION

17. Miss Marlhens applied to the Commission on 29 September 1993. She alleged that the 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. 22862/93) admissible on 6 September 1994. In its report of 17 January 1995 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a breach of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion is reproduced as an annex to this judgment (1).

1. Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment

(volume 317-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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#### AS TO THE LAW

19. On 26 April 1995 the Court received from the applicant's lawyer a document signed by Miss Marlhens on 25 April 1995, 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, consisting in:

payment of compensation of FRF 150,000;

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.

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

I therefore agree, in consideration of the payment of these sums, 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 pay me this compensation as soon as the Court has decided to strike the case out of its list.

..."

In a letter of 27 April 1995 to the Registrar the Agent of the Government confirmed this agreement.

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

20. The Agent of the Government and Miss Marlhens's lawyer subsequently declared that the costs and expenses were entirely covered by the legal aid granted to the applicant by the Commission (see paragraph 5 above).

21. The Court takes formal note of the friendly settlement reached by the Government and the applicant. 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 24 May 1995.

Signed: Rolv RYSSDAL  
President

Signed: Herbert PETZOLD  
Registrar